LONG ODDS (STILL) IN IRAQ · TIMIDITY AT THE *TIMES*

THE AMERICAN PROSPECT

JULY 2004

INSIDE THE CRACK-UP

Bush Shatters the Reagan Coalition

DANNY POSTEL

PLUS

The Media vs. The People

ROBERT W. McCHESNEY

ARIANNA HUFFINGTON

JAMES FALLOWS

PAUL STARR

I Want My GOP Back!

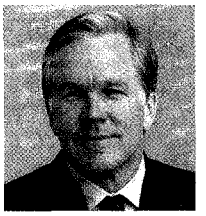
NKERTON

WWW.PROSPECT.ORG

$3.95 USA/$5.95 CANADA

REASONABLE DOUBTS: A SPECIAL REPORT ON THE DEATH PENALTY

THE AMERICAN PROSPECT



"Match the Times *against* The Washington Post. *They're getting their clock cleaned. It's obvious to everyone except the top editors of* The New York Times." PAGE 31

Contents

JULY 2004 • NUMBER 7 • VOLUME 15

DEPARTMENTS

3 PROSPECTS
Earth to Kerry...

4 CORRESPONDENCE

6 DEVIL IN THE DETAILS
Nader's Republican Raiders; the social life of Kerryites; the afterlife of Starr's prosecutors; plus Tom Tomorrow

COLUMNS

16 THE TAXONOMIST
Oinkonomics?
By Robert S. McIntyre

40 THE LAST WORD
Bush's God
By Robert B. Reich

DISPATCHES

11 BALLOT INSECURITY
What needs to happen before Iraq can hold real elections? Plenty.
By Laura Secor

13 THE MAN IN THE IRON MOSQUE
A radical Sunni cleric sprung from Abu Ghraib; no happy camper, he.
By Robert Collier

14 EASTERN BLOC PARTY
Remember "new" Europe versus "old" Europe? Now it's just "Europe."
By Jim Rosapepe

SPECIAL REPORT

A1 REASONABLE DOUBTS
The growing movement against the death penalty
Articles by Hugo Adam Bedau, Tom Lowenstein, Jean M. Templeton, Joseph Rosenbloom, Christina Swarns, Sasha Abramsky, Anthony G. Amsterdam, and Connie de la Vega

Features

17 Building a Better UN
Yes, we need the United Nations. But we need it to be better. Can reform happen when dictators can outvote democrats?
By Laura Rozen

21 Look Who's Feuding
Finally, Bush's war comes home—to his party. Inside the schism that's ripping the Republican coalition apart.
By Danny Postel

24 Waging the Media Battle
Is there any hope that the corporate media can serve the public interest again? Actually, recent history shows that there is. But winning that fight won't be easy.
By Robert W. McChesney
With responses by **Arianna Huffington, James Fallows,** and **Paul Starr**

CURRENTS

31 MEDIA: IT WAS A VERY BAD YEAR
Bill Keller marks one year at the *Times*. Don't expect many parties.
By Todd Gitlin

34 BOOKS
James P. Pinkerton on *The Right Nation: Conservative Power in America* by John Micklethwait and Adrian Wooldridge; **Drake Bennett** on *The Cheating Culture: Why More Americans Are Doing Wrong to Get Ahead* by David Callahan; **Daphne Eviatar** on *A Continent for the Taking: The Tragedy and Hope of Africa* by Howard W. French

COVER *Cover design by Aaron Morales*

COVER: KEVIN LAMARQUE/REUTERS/LANDOV; ABOVE: GETTY IMAGES

The American Prospect (ISSN 1049-7285) is published monthly by The American Prospect, Inc., 2000 L Street., NW, Suite 717, Washington, DC 20036 (editorial office) and 11 Beacon Street, Suite 1120, Boston, MA 02108 (business office). Periodicals-class postage paid at Boston, MA, and additional post offices. Postmaster: Please send address changes to The American Prospect, P.O. Box 601, Mt. Morris, IL 61054-7531. Printed in the United States.

THE AMERICAN PROSPECT

CO-EDITORS **Robert Kuttner, Paul Starr, Michael Tomasky**
CO-FOUNDER **Robert B. Reich**

EXECUTIVE EDITOR **Michael Tomasky**
DEPUTY EDITOR **Sarah Blustain**
EDITOR-AT-LARGE **Harold Meyerson**
MANAGING EDITOR **Erin Pressley**
SENIOR EDITOR/WEB EDITOR **Tara McKelvey**
POLICY EDITOR **Dorian Friedman**
FOREIGN POLICY EDITOR **Laura Secor**
SENIOR EDITOR **Garance Franke-Ruta**
ASSOCIATE ART DIRECTOR **Aaron Morales**
COPY EDITOR **Jeremy Berlin**
ASSOCIATE WEB EDITOR **Jeffrey Dubner**
ASSOCIATE EDITOR **Rhea Wilson**
WRITING FELLOWS **Ayelish McGarvey, Matthew Yglesias**
EDITORIAL INTERNS **Rob Anderson, Colleen Stevens**
SENIOR CORRESPONDENTS **Nicholas Confessore, Ann Crittenden, Robert Dreyfuss, James Fallows, Gershom Gorenberg, E.J. Graff, Mark Greif, John B. Judis, Chris Mooney, Sasha Polakow-Suransky, Eyal Press, Joseph Rosenbloom, Richard Rothstein, Peter Schrag, Michael Steinberger, Noy Thrupkaew, Jason Vest, Sarah Wildman**
CONTRIBUTING EDITORS **Marcia Angell, Alan Brinkley, Jonathan Cohn, Jeff Faux, Merrill Goozner, Arlie Hochschild, Christopher Jencks, Randall Kennedy, Robert S. McIntyre, Alicia H. Munnell, Karen M. Paget, Alejandro Portes, Jedediah Purdy, Robert D. Putnam, Samantha Sanchez, Deborah A. Stone, Cass R. Sunstein, *William Julius* Wilson**

DESIGN CONSULTANTS **Point Five Design**
Alissa Levin, Creative Director; Benjamin Levine, Designer

MOVING IDEAS NETWORK
DIRECTOR **Melanie Alston-Akers**
STRATEGY DIRECTOR **Diana Onken**
OUTREACH COORDINATORS **Rebecca Wiegand, Shireen Zaman**
INTERN **Jessica Lupo**

PRESIDENT **Robert Kuttner**
PUBLISHER **Robin Hutson**
CONTROLLER **Barbara Saunders**
MARKETING MANAGER **Jennifer Gilman**
DEVELOPMENT ASSOCIATE **Alison Leff**
DEVELOPMENT ASSISTANT **Sarah Gurfein**
WEB MASTER **Jocelyne Yourougou**
ADMINISTRATIVE ASSISTANT **Tim O'Brien**
CIRCULATION CONSULTANTS ***ProCirc, Cary Zel, Director; Susi Chapman, Manager***

FOUNDING SPONSORS **Kenneth J. Arrow, Daniel Bell, Kenneth B. Clark, Marian Wright Edelman, John Kenneth Galbraith, Sidney Harman, Irving Harris, Albert O. Hirschman, Harry Kahn, Charles Lindblom, Arthur M. Schlesinger, Jr., Fritz Stern, James Tobin**

BOARD OF DIRECTORS **Richard C. Leone, Chairman**
Maria Echaveste, Danny Goldberg, Jehmu Greene, Christopher Jencks, Michael J. Johnston, Randall Kennedy, Robert Kuttner, Nancy Mills, Robert B. Reich, Adele Simmons, Paul Starr, Benjamin Taylor, Laura Tyson

ADVERTISING SALES **Robin Hutson, Publisher, (617) 570-8030**
SUBSCRIPTION CUSTOMER SERVICE **1-888-MUST-READ (687-8732)**
SUBSCRIPTION RATES **$39.95 (U.S.), $59.95 (foreign) and $54.95 (Canada)**
MEDIA RELATIONS **Alison Leff, (202) 776-0730**
NEWSSTAND DISTRIBUTION ***Big Top Newsstand Services, a division of the IPA,*** **(415) 643-0146 or fax (415) 643-2983 or e-mail info@bigtoppubs.com**
REPRINTS CCC **Academic Permissions Service, 222 Rosewood Drive, Danvers, MA 01923, (978) 750-8400**
MICROFILM **University Microfilms, Inc., (734) 761-4700**

Earth to Kerry...

George W. Bush had a pretty good month. Iraq is still a mess, but the Bush administration, with the improbable help of the United Nations, managed to confound the critics and install a new government in Baghdad. The UN Security Council blessed the venture, 15 to 0. The U.S. economy generated decent job-growth numbers for the third consecutive month. And Ronald Reagan's death projected a halo that Bush appropriated (for a week, anyway).

All of these gains, of course, are fragile. The new Iraqi government is shaky. U.S. jobs may be growing but real wages are not. The most politically visible economic indicator is the price of gas at the pump. And the inevitable comparisons with the Gipper haven't necessarily been kind to Bush.

Still, despite the president's low approval ratings, there is a nontrivial chance that Bush could pull out of his nosedive this summer. Iraq could remain tolerably stable until November. If the interim government doesn't collapse by election day, we will hear the administration declaring that, yes, it was messier than we anticipated, and no, we couldn't find weapons of mass destruction. But by God, we got Saddam Hussein out, the country is back in the hands of friendly Iraqis, our relations with allies are on the mend, and the gambit was, as Paul Wolfowitz argued in *The Wall Street Journal* on June 9, a triumph of U.S. leadership and nerve after all.

The voters are prepared to oust George W. Bush, but are they ready to vote in John Kerry?

By the same token, the economy could remain on a mediocre but not disastrous path. The House of Saud will never have a better friend than the House of Bush. You can be sure that the Bushies are using all their leverage to get more oil flowing. Americans now imagine the price of gas stuck around $2.29 a gallon. Should that come down to, say, $1.89 by October, it will look like a successful energy policy. Alan Greenspan, who shamelessly gave Bush cover for all his tax cuts and the resulting fiscal calamity, has turned out to be enough of a loyal Republican toady that he will likely keep interest rates moderate until after November.

All of this is a reminder that while Bush is surely vulnerable, he will be no pushover. Which brings us to the matter of John Kerry. Senator Kerry has been eerily lackluster lately. While a lot of swing voters are prepared to vote against George W. Bush, John Kerry hasn't yet made the sale. There is rage against Bush in the land, but how many Kerry buttons and bumper stickers have you seen?

THERE ARE SEVERAL INTERPRETATIONS OF KERRY'S DISconcerting quiescence. None is a very persuasive excuse.

First, we hear the oft-repeated saw that when your opponent is doing himself in, the best tactic is to stay out of the way. If that's what his handlers are advising, Kerry should overrule them. When the incumbent president is repeatedly exposed as a liar and an incompetent, that is the time to keep saying so.

Second, we hear that it's early; the voters aren't really paying attention. Wrong again. It may only be June, but the Bush machine is relentlessly defining Kerry for the voters. If Kerry doesn't do a better job of defining himself, the Republican's image of Kerry as an extreme Massachusetts liberal, flip-flopper, preppie stiff, Frenchie, etc. will jell in the mind of the electorate. We saw from Al Gore what happens when a challenger keeps trying to "reintroduce" himself after Labor Day.

Third, we hear that as the general election approaches, Kerry is naturally moving to the center. But a centrism built on narrowing differences with Bush will inspire nobody.

The fourth explanation is the most worrisome of all. It's that Kerry seems to get animated only after he has a near-death experience. It happened in Iowa, and it happened in his last Senate race. This problem is less tactical than characterological—it seems to be part of Kerry's own DNA.

Playing come-from-behind in the last days of the race is risky because you are a prisoner of events. One thinks of the 1980 election, which seesawed back and forth until Ronald Reagan decisively pulled away only in the final week as Jimmy Carter got bogged down in bad economic news and the Iranian hostage crisis.

Count on Bush and company to manipulate events to the max. If Kerry needs a near-death experience to get energized, he should reflect on the fact that his near-death might be happening right now.

—ROBERT KUTTNER

"AARP and other 'advocacy' organizations that participate in the incremental dismantling of Medicare should be viewed for what they are: nonprofits advocating for their own well-being."
—**DONNA WAGNER**, Towson, MD

Correspondence

Bury the Hatchet ...

I WAS DELIGHTED TO READ "Come Together" [June 2004] by Robert Kuttner and Will Marshall. It's about time we buried our minor differences and confronted the common enemy. E.J. Dionne Jr.'s piece in the same issue, "Democratic Détente," gives very sound advice.

George W. Bush is a menace whose defeat is essential. Let's stop being purists and work together to defeat him.

IRWIN SCHNEIDERMAN
New York, NY

... Or Carry One?

"DEMOCRATIC DÉTENTE" is another tepid call for Democrats to forget about fundamental issues and focus only on how Democrats are a better choice considering how bad the Republicans have become. Dionne states that the first thing we must abandon is arguing for government, in and of itself. But this is exactly what needs to be done, and why the Democratic Party is anemic.

If a candidate had the nerve to come out strongly for government, even big government, he or she might lose a few conservative votes but more than make up for it by gaining independents who strongly support the underlying policies, as polls consistently show. Only with a candidate that makes a strong case for government will progressive issues become justified in entering the public debate.

Dionne's 20 points are on target, but only by clearly stating why government matters will people see that there is an alternative and antidote to pure individualism and privatization.

HARLAN LEVINSON
Los Angeles, CA

Kerry Good Advice

I AM VERY IMPRESSED with the quality and scope of articles in *The American Prospect*. At the urging of my mother in Florida, I picked up the May 2004 magazine.

I have a comment on Matthew Yglesias' excellent article "Freedom Fraud" [May]. Yglesias laments that while John Kerry noted a position in a foreign-policy speech on aid and terrorism, Kerry doesn't discuss that position while campaigning. Kerry would love to discuss foreign-policy proposals and nuances with the public, but he has been advised to keep his comments in "sound bite" form. Unfortunately, the advice is probably correct. I have observed that few Americans read below the headlines, and even fewer make an effort to watch shows that explore the details of politics.

When Kerry becomes president, his depth of experience and knowledge, coupled with the excellent policy advisers he will choose, will give him a running start at the "mess of things" the Bush crowd will leave behind.

LINDA ALLEWALT
Shelbyville, KY

AARP Elbows

BARBARA T. DREYFUSS' article regarding AARP ["The Seduction," June] was a perfect example of the "special interest" problems outlined in Theda Skocpol's piece on "The Narrowing of Civic Life" [June]. Advocacy groups get in the door at the highest level in Washington by purporting to represent a large group of voters when, in fact, these groups are most often representing ideological positions that directly conflict with the well-being of their so-called constituencies.

Advocates for the elderly understand that the way to ensure a high-quality old age is to make sure that people have access to good health care throughout their lives. The for-profit, employer-based health-care system in America leaves millions out in the cold—and, as the U.S. population increases in age, the true cost of for-profit heath care will continue to limit the options and quality of life of millions of aging Americans.

AARP and other "advocacy" organizations that participate in the incremental dismantling of Medicare are part of the problem and should be viewed for what they are: nonprofits that are advocating for their own well-being at the expense of their members.

DONNA WAGNER, Ph.D.
Director of Gerontology
Towson University
Towson, MD

BARBARA T. DREYFUSS' June article is a conspiracy theory that assigns fictional motives to AARP's principled support of the Medicare prescription-drug law passed last year. Our endorsement of this important legislation centered on a single reason: It will provide important drug coverage and financial relief for millions of current and future Medicare beneficiaries. That has been AARP's No. 1 goal for the last five years. We are proud to have helped bring it about.

Elevating politics over policy is not our game. We have always been and remain nonpartisan, dedicated to the needs and rights of older Americans. We have a strong track record of working with Democrats and Republicans to enact meaningful legislation.

Dreyfuss' claims are more fiction than fact. For example, the e-mail referenced in the article was actually written after AARP had made clear its intention to stand firm on several key

points we wanted to see in the bill. It asserted our seriousness of position along with the fact that we shared the goal of getting a meaningful benefit enacted. The e-mail was taken out of context and selectively cited. AARP Advocacy Director Mike Naylor's work history was also selectively cited. His résumé includes a decade of work on Capitol Hill, where he served as an adviser to Senators John Culver and Chris Dodd, both Democrats.

We hire the best people, regardless of ideology. The important point is that our staff and volunteers work to serve and protect our members. This is the truth about AARP, our support of the Medicare legislation, and our work moving forward.

WILLIAM D. NOVELLI
Chief Executive Officer
AARP, Washington, DC

Barbara T. Dreyfuss responds: In responding to my article, AARP CEO Bill Novelli issued yet another defensive justification for supporting the Medicare bill but conveniently overlooked the fact that the article was about a much broader, deeper issue than AARP's support for this one bill. That seniors desperately need comprehensive drug coverage is not in dispute. That the AARP leadership could accept such a strikingly flawed plan as the Medicare prescription-drug law, in light of that need, was the result of years of cajoling, seduction, and pressure by conservative Republicans on AARP, and the point of the article.

AARP's support for the Medicare bill is only the latest love child of that seduction. In his reply, Mr. Novelli did not comment on why he is enamored of Newt Gingrich, one of the most ardent opponents of government-run Medicare and now of employer-based insurance. Nor did he address why AARP has collaborated so closely with conservative House and Senate Republicans who've been trying to undo Medicare since it was first established.

As to the facts about the AARP e-mail to the White House: As Mr. Novelli says, it was sent after AARP had made "clear its intention to stand firm on several key points," which I noted in my first sentence. That's why the e-mail, which told the White House not to worry because AARP was privately "suggesting some fairly moderate ways for handling the biggest issues," was so striking and surprising to many liberal Democratic staffers when they recently learned of it.

Letters to the editors should be sent to letters@prospect.org or mailed to The Editors, The American Prospect, 2000 L St., NW, Suite 717, Washington, D.C. 20036

Devil in the

A Shadow of His Former Self: Ralph Nader, silhouetted on the shade

Nader's New Raiders

WHEN OPPOSITES ATTRACT, it's not always a case of innocent bliss. During the month of April, donations to Ralph Nader's presidential campaign from contributors who have historically given to Republican candidates or the Republican Party spiked dramatically to 19 percent—that's $18,000—according to a database search on OpenSecrets.org, a nonprofit Web site that tracks money in politics.

Back in March, *Dallas Morning News* reporter Wayne Slater revealed that nearly 10 percent of contributions of $250 or more to Nader's campaign came from donors with a history of supporting the GOP. *The Arizona Republic* reported in early June that Republican money could also be funding a petition drive to ensure Nader's place on Arizona's presidential election ballot. While Nathan Sproul, the Republican consultant behind the rumor, denies the allegations, Arizona's state Democratic chairman says he has evidence that Sproul is "the primary source of money" for paying petition circulators.

So is a vast right-wing conspiracy outwitting the Democrats? When the donor story first broke, most of the conservative Nader backers told *The Dallas Morning News* and *New York Times* that, although they would never vote for Nader, they were genuinely interested in the independent's campaign. But what, exactly, were they interested in? Nader's plan to pull all troops out of Iraq? His call for more government regulation of businesses? Or was it his plan for universal health care that got them?

For his part, Nader spokesman Kevin Zeese argues that the conspiracy theory is bunk. "This isn't surprising at all," he says. "We expect more and more support from Republicans because the base is dissatisfied with [George W.] Bush." Some recent polls offer tenuous support to Zeese's claim that the Nader ticket will draw from both dissatisfied Democrats *and* Republicans. Funny thing, though; we don't see many Democratic operatives helping Nader get on ballots.

—ROB ANDERSON

The Social Life of Kerryites

ABOUT A YEAR AGO I GOT roped into the Friendster social-software system by an English friend. Originally designed to help people find dates through friends, it's mainly used by my circle of college chums to stay in touch despite living in far-flung metropoles. My Friendster message board used to be full of things like invitations to refer friends to an Asian dating game show or queries about where to go to get lamps repaired in Los Angeles.

Sometime in March, though, all of that ground to a halt. Today, my Friendster

MICHAEL KLEINFELD/UPI/LANDOV

Details

"Here are the people who would turn out to see Joseph Goebbels convince you that Poland invaded the Third Reich."
—BILL O'REILLY's take on the crowd at a screening of Michael Moore's *Fahrenheit 9/11*

network has been taken over by John Kerry fundraiser invitations.

The Kerry for President campaign has been more successful at raising funds than any Democratic presidential campaign in history, and it has raised a record percentage of that money in small amounts from nontraditional donors. And no wonder: If you are part of certain blue-state social circles, it can seem as if no one throws normal parties anymore, and everyone who's anyone is busy sponsoring or attending Kerry fundraisers.

"It's only $15 online now. It's in Brooklyn. It's the future of your country and the whole friggin world, for chrissakes," implores one missive from a musician college pal inviting me to a "Concerts for Kerry" event in New York City. The Kerry Core low-dollar fund-raising team teases me by e-mail with the header "Bill Clinton & Natalie Portman, together at last"—a D.C. Kerry benefit party featuring the former president and "desserts with Natalie Portman." Another friend sends a chipper note about a different upcoming festivity: "Hey kids—It's time for another fun-filled social event—a fundraiser for John Kerry!"

"Civil society has been suspended," jokes yet another friend. "From now until Nov. 2, there will be nothing but Kerry fundraisers." He himself helped sponsor the "AXIS OF GOOD First Quadrennial 'Mission: To Be Accomplished' John Kerry Fund-Raiser & Hoe-Down," featuring "FREE DRAFT MADE IN USA BEER FOR THE FIRST HOUR."

Not everyone's so keen on the all Kerry, all the time socializing, though. "I'm not sure if I'm comfortable without a layer between me and the state," says a friend, a political scientist worried about the erosion of nonpolitical social space.

Another friend who works in finance was invited to a $1,000 a plate luncheon for south Asian leaders for Kerry in New York, and planned to attend—it was rescheduled because of Ronald Reagan's funeral—even though she does not regularly vote and knows little about Kerry. "You're basically paying $1,000 to network," she says. "That's really why people are going."

By transforming blue-state social life with a relentless program of events and appeals, the Kerry campaign is creating pressures to donate that have nothing to do with Bush bashing and everything to do with being part of a trendy new see-and-be-seen scene.

—GARANCE FRANKE-RUTA

Rising Starrs

BILL HAS SURVIVED.

Almost five years to the day after the Independent Counsel Act expired, former President Clinton released his memoir, *My Life*, which, properly enough, is none too kind to the zealous team of prosecutors assembled by Kenneth Starr.

But the erstwhile little Starrlets are doing fine, thank you very much, and many have received high-powered appointments from the Bush administration. Kevin Martin moved from his

VAST RIGHT-WING CONSPIRACY

Karl Rove is so desperate for votes from conservative Christians that he just might don a black preacher's robe and hit the pulpit.

In early June, Luke Bernstein, coalitions coordinator for the Bush campaign in Pennsylvania, wrote a letter to team leaders in the state, which was leaked to The Associated Press: "The Bush-Cheney '04 national headquarters ... has asked us to identify 1,600 'Friendly Congregations' in Pennsylvania where voters friendly to President Bush might gather on a regular basis," it read.

There's just one problem: Churches are tax-exempt organizations, and they can lose that privilege if pastors campaign from the pulpit. The Bush campaign's letter made no mention of this fact. The story was met with much bad press, from both secular and religious media outlets. Indeed, it was an almost laughably egregious violation of the separation of church and state.

But the Bush team wasn't kidding around. Rather than issue a mea culpa after the Pennsylvania incident, conservative lawmakers set about to change the rules. On June 9, *The Washington Post* reported that House Republican leaders sneaked a provision into the American Jobs Creation Act that would allow clergy members to commit three "unintentional violations" of the tax rules on political activity each year without risking the loss of tax-exempt status. Called "Safe Harbor for Churches," the provision would allow religious leaders to preach politics as long as they make clear they are acting as private citizens.

But not many private citizens preach to a captive congregation on a weekly basis. Thankfully, even some conservative Christian leaders oppose changing the tax laws in time for the election. Southern Baptist church-state specialist Richard Land told House Speaker Dennis Hastert in a letter that the new provision presented "an unacceptable intrusion of the IRS into the business of a church."

Amen, brother.

—Ayelish McGarvey

ICONS BY PETER HOEY

BRAVE NEW WORDS

TORTURE Not, according to a Pentagon memo, "the infliction of pain or suffering per se." It's got to be severe. What's more, your "good faith belief" that you are inflicting non-severe pain "need not be a reasonable one" to get you off the hook. Torture, then, means something worse than what U.S. forces could inflict.

WITH ME Where George W. Bush told the Vatican's secretary of state he wants the American bishops to be, i.e., refusing communion to John Kerry and granting it to such abortion-rights Republican Catholics as Tom Ridge, George Pataki, and Arnold Schwarzenegger.

REMARKABLE CHANGE German Chancellor Gerhard Schröder's description of recent developments in U.S. foreign policy after meeting with Bush at the G8 summit. See also, **SHAMELESS PANDERING.**

role as associate independent counsel onto George W. Bush's 2000 campaign, serving as deputy general counsel before being appointed as a Federal Communications Commission commissioner. From his new post, Martin has helped lead the recent anti-obscenity crusade, even before Janet Jackson strategically disrobed at the Super Bowl. And he still has that old Starr indifference to the existence of actual evidence. "Complaints [to the FCC] should no longer be denied because of a lack of tape, transcript, or significant excerpt," he has said.

Other Starr progeny have been plopped onto the federal bench: Amy St. Eve is now a district judge while Steven Colloton sits on the 8th U.S. Circuit Court of Appeals. The third Starr retread currently wielding a gavel, District Judge John Bates, played a major role in stymieing a more substantive investigation than the one he pursued under Starr. The General Accounting Office (GAO) brought the first lawsuit in its 80-plus-year existence after Dick Cheney stonewalled its attempt to obtain information about the veep's 2001 energy task force. Bates, who provided the rationale for subpoenaing any woman to whom Clinton may have talked dirty about Whitewater, dismissed the GAO's effort to learn with whom Cheney's task force conferred.

The fourth—and, we hope, final—judicial nominee aligned with the Starrs is unlikely to be confirmed. The nomination of Brett Kavanaugh, who recommended judicial nominees for the current administration before his Cheney-esque self-selection to the influential U.S. Court of Appeals for the District of Columbia Circuit, was seen as a "slap in the face" by Senate Judiciary Committee Democrats. It was Kavanaugh who wrote the section of *The Starr Report* that outlined12—count 'em, 12—grounds for impeachment. (Asked point-blank by Senator Charles Schumer whether he would have voted "guilty" or "not guilty" on the two articles that eventually reached the Senate floor but were rejected, Kavanaugh refused to answer.) If confirmed, Kavanaugh, 39, would have had the least prior legal experience of any judge in the circuit's history, but for one: Kenneth Starr.

—JEFFREY DUBNER

Ground Zero West

WHILE NEW YORK'S SEPtember 11 memorial as yet exists only in architectural renderings, another 9-11 monument, open for more than a year, has already drawn millions of visitors. To get there from Ground Zero, take the Holland Tunnel to New Jersey and drive for three days, keeping your eyes peeled for the next Empire State Building—the one at the New York-New York Hotel and Casino, a scaled replica of the Manhattan skyline that bills itself as "The Greatest City in Las Vegas."

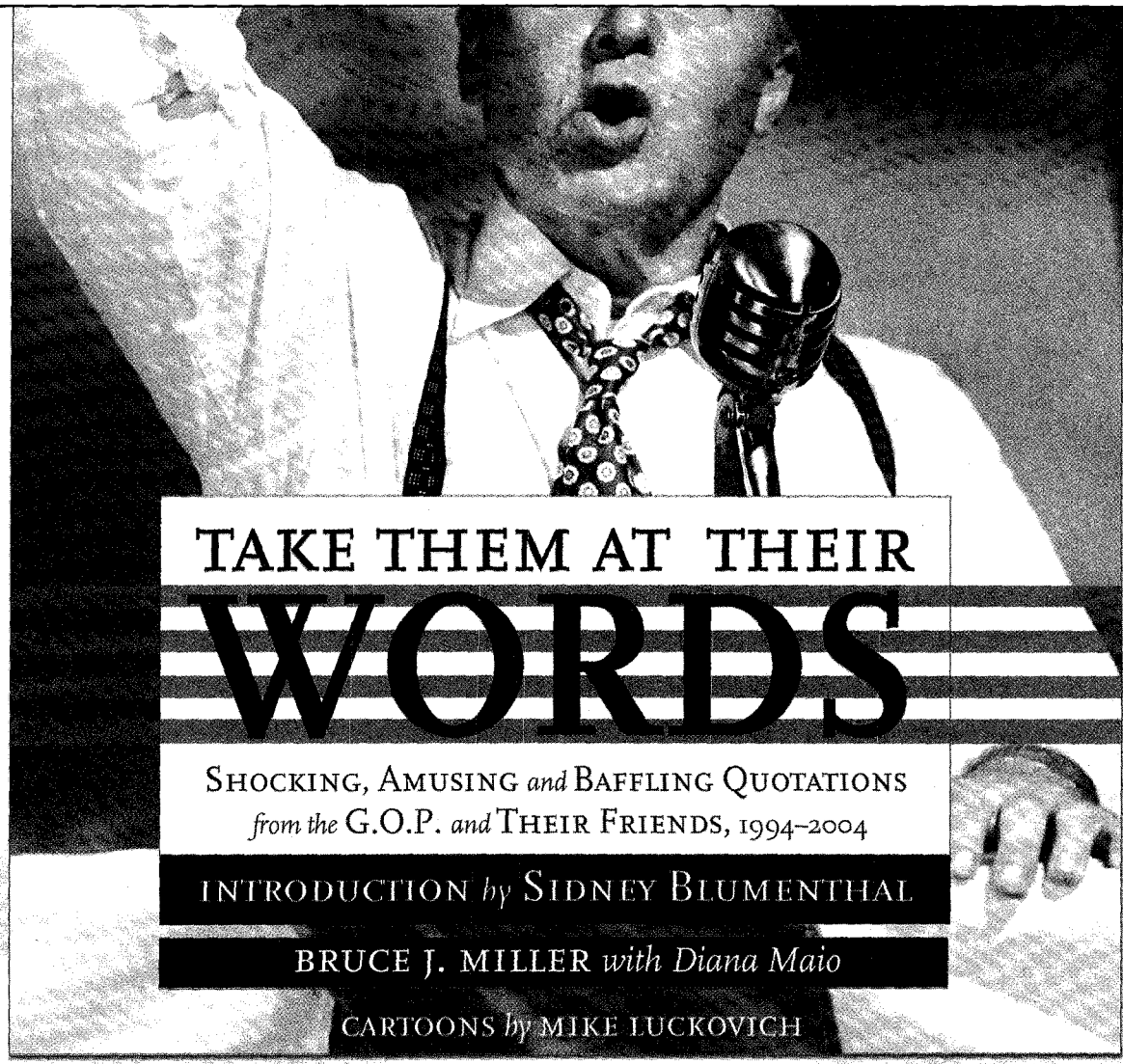
The curving, dark granite 9-11 memorial, which includes brass plaques with quotes from the president and first lady, sits in front of the casino's Statue of Liberty replica at the corner of "the Strip" and Tropicana Avenue. An orderly line of gamblers streams past to pay respects at all hours. In the days following the World Trade Center attacks, hoards of tourists created a makeshift memorial at Lady Liberty's feet. (The hotel's "skyline" never included the Twin Towers.) Faced with the dilemma of what to do with all the items, which included more than 3,000 T-shirts from police and fire departments in all 50 states, MGM Mirage, the company that owns the casino, decided to create a permanent monument.

The hotel enlisted the help of professor David Schwartz, coordinator of the Gaming Studies Research Center at the University of Nevada, Las Vegas, to act as curator. Schwartz selected certain items to be part of the memorial display. The rest he archived at UNLV's Lied Library, just down the street from that other repository of Sin City's cultural heritage, the Liberace Museum. The understated (by Vegas standards) memorial was designed by local architect Marnell Carrao, whose chief claim to fame remains the Bellagio, just up the Strip.

Considering Vegas' reputation for escapism and disconnect from reality—Sin City's official tourism slogan is "What happens here, stays here"—the tribute to tragedy seems a mite odd. MGM Mirage never built a memorial to its own tragedy, the 1980 fire at the MGM Grand that claimed 87 lives. But what is most striking about the Vegas tribute is that it doesn't commemorate the actual victims of the 2001 terrorist attacks at all, but rather the country's immediate reaction to 9-11.

By holding the Republicans' upcoming convention in Manhattan just north of Ground Zero, Karl Rove and company will surely try to invoke the emotions of 9-11 to the advantage of the Bush campaign. But if they really want to convince Americans that the Bush administration deserves four more years, they need to conjure up the disconnect from reality that's required to erase all the administration's failures. Clearly, they picked the wrong New York, New York. Vegas would have been perfect.

—DANIEL BROOK



TAKE THEM AT THEIR WORDS

SHOCKING, AMUSING *and* BAFFLING QUOTATIONS
from the G.O.P. *and* THEIR FRIENDS, 1994–2004

INTRODUCTION *by* SIDNEY BLUMENTHAL

BRUCE J. MILLER *with Diana Maio*

CARTOONS *by* MIKE LUCKOVICH

"***Take Them At Their Words*** is fun, frightening and instructive. And, in an election year, it should be required reading for every American who wants to take back our country from the Far Right."—**JOE CONASON**

"***Take Them At Their Words*** is more than a brilliant and endlessly amusing sampling of quotations from the Right. It is a volume that reveals an unabashed world view that today holds sway in the White House, the Congress and much of the media. You may read and laugh, but, remember, they mean it."—**SIDNEY BLUMENTHAL** *from the Introduction*

390PP • PAPERBACK • 5 1/2 X 8 1/2 • $15.95 • 0-89733-521-X

FROM YOUR BOOKSELLER, ONLINE OR DIRECT FROM
ACADEMY CHICAGO PUBLISHERS • 363 WEST ERIE • CHICAGO, IL 60610
312-751-7300 • 800-248-READ • FAX 312-751-7306
INFO@ACADEMYCHICAGO.COM • WWW.TAKETHEMATTHEIRWORDS.COM

ACADEMY CHICAGO

Dispatches

Iraq the Vote: Iraqis take it to the streets; taking it to the ballot box is a little trickier.

AKRAM SALEH/REUTERS/LANDOV

Ballot Insecurity

In theory, the June 30 handover in Iraq is supposed to clear the path to free and fair elections. In practice, it's a little more complicated than that.

BY LAURA SECOR

SIX MONTHS AGO, THE QUESTION ON the lips of most critics of the occupation of Iraq was one that the Grand Ayatollah Ali al-Sistani had posed: Why not hold elections by June 30? At the time, the U.S.–led Coalition Provisional Authority (CPA) claimed that it was just not possible. The United Nations agreed. And so all parties settled for an appointed interim government and a January 2005 election date.

But with security deteriorating, the need for a legitimately representative Iraqi government grows more urgent every day. Critics of the transition plan—including Joseph Biden, the ranking Democrat on the Senate Foreign Relations Committee—are once more asking why it shouldn't be possible to speed Iraq down the path to representative government. What exactly must be, and what exactly can be, accomplished before Iraqis can go to the polls?

In the past, the most commonly cited reasons for delaying elections were logistical. Iraq had no voter rolls, and electoral laws were needed to resolve fundamental questions, such as who should be considered an Iraqi citizen, whether representation should be direct or proportional, and whether or not there should be regional districting in national elections. A United Nations team has just finished overseeing the design of that legislation. (There will be proportional representation and no regional districts; exiles are citizens, but not their children.) A seven-member electoral commission, composed of Iraqis appointed by the UN, will oversee the election's logistics. Is it possible for the commission to complete its vast task by January 2005? "Yes," says Sean Dunne, chief of operations for the UN's electoral assistance division. "Is it happening on an extremely tight timetable, and under challenging operational circumstances? Of course it is."

But such difficulties haven't been the only, or even the most serious, cause for delaying elections. There is also a pressing security problem that will likely produce widespread voter intimidation. As the Iraqi scholar Faleh Abdul Jabar writes in a May 2004 report for the U.S. Institute of Peace, "Like many other economically devastated societies in the immediate aftermath of conflict, Iraqis are plagued with violence, awash in arms, and lacking a mature political class with experience in conflict resolution and consensus building. Given the existence of warlords and party militias, direct elections now would hardly reflect rational free choices."

Nor would they be likely to produce a moderate or stable political class. As Carnegie Endowment for International Peace senior associates Marina Ottaway and Thomas Carothers pointed out in an October 2003 policy brief, early elections in comparable situations—in Cambodia, Angola, Liberia, Bosnia, and elsewhere—have a long and storied history of failure. In the immediate aftermath of conflict, political advantage nearly always accrues to extremists, who are often perceived as tougher and better able to protect the interests of

ethnic and sectarian groups. In the case of Iraq, this was all the more likely because the country's civic and political life had been so thoroughly destroyed by Saddam Hussein. Outside of the Kurdish north, only a few politicians have managed to make their names or their agendas known during the chaotic 15 months of occupation, and these are the ones with organizational advantages, such as clerical status, service on the U.S.-appointed Iraqi Governing Council, or Baathist ties. Religious Shia parties reportedly receive substantial Iranian funding. Even Iraqis who would like to vote for moderate, nonsectarian candidates are hard-pressed to find them.

In an ideal world, then, waiting for January 2005 to hold Iraqi elections would mean that when the time came, voters would feel safe and find themselves choosing among candidates with clear messages and organized party bases. It's pretty clear that no such moment is forthcoming, though, either now, in the fall, or probably even by January. But there are a few broad areas in which the interim government and the coalition powers simply must make progress in the next six months for even drastically reduced expectations to be met.

Violent crime is commonplace in Iraq. Rough statistics place Baghdad's murder rate at 70 per 100,000, as compared with 43 per 100,000 for Washington, D.C.

Make the defense of the Iraqi people, as opposed to counterinsurgency operations, the top security priority. As spectacularly horrifying as the political violence in Iraq has been, for ordinary people it is only one element in a general climate of fear. Amatzia Baram, a senior fellow at the U.S. Institute of Peace, notes that violent crime—including murder, armed robbery, and kidnapping—has become commonplace in the new Iraq. (Rough statistics compiled by the Brookings Institution place Baghdad's murder rate for May at 70 per 100,000, as compared with 43 per 100,000 for Washington, D.C.)

These problems are both pressing and soluble. "You cannot really reduce political terrorism very quickly," says Baram. "That's a problem that will bedevil the Iraqi people for two, three, four, five years. But you can reduce substantially ordinary crime."

To do so will require what Hoover Institution fellow and former CPA senior adviser Larry Diamond says should be a "massive effort" to recruit, train, and equip an Iraqi police force. "The interim government will do the recruiting. We need to take care of training and equipping," says Diamond, who has been fiercely critical of the CPA's failure to adequately equip Iraqi security forces in the past. The ranks of this security force would have to be drawn heavily from some of the nine militias (comprising some 100,000 armed men) that have agreed, at least formally, to disband and reintegrate into a national security force. Diamond cautioned in testimony to the Senate Foreign Relations Committee that these men must participate in Iraq's security forces as individuals rather than as units with their militia command structures intact. Otherwise, Diamond warns, the country risks a bloody dismemberment.

Provided that this recruitment and reintegration effort is successful, a substantial police force could be amassed by as early as October, Baram estimates. At that time, with three or four months to go until elections, Baram suggests that officers patrol every corner in Baghdad in groups of three. With such a show of force, Baram is confident that the crime rate could drop by as much as 80 percent. That might not end the insurgency, but it could go a long way toward draining the swamp. Says James Dobbins, director of the RAND Corporation's International Security and Defense Policy Center and a senior adviser on post-conflict situations under four presidents, "Military operations against insurgencies are won by gaining the support of the population and offering them security. It's their security and not yours that's important." What we need, says Dobbins, is "less talk of offensive counterterrorism, more talk of defending the local population."

Attack infrastructure problems. The interim government needs to demonstrate effectiveness on the ground. That's the single best way to win the population's trust and to enlist ordinary people in the project of reconstruction, political and otherwise. It's also vitally necessary. Baram suggests a massive public-works program that would employ as many as a million currently unemployed men at $150 a month to do things like "clear up the horrendous garbage all over Baghdad, and clear up the sewage swamps." Baram also suggests ordering thousands of generators to get Baghdad's electricity cranking in the summer if the grid itself can't be repaired quickly or thoroughly enough. These are investments, but they would surely bear fruit in terms of the long-term prospects of a project into which the Bush administration has already sunk American blood, treasure, and prestige. Baram notes that something as simple as lighting the streets of Baghdad through the night could dramatically reduce crime and lift morale.

Help independent parties enter the political process by making public funds available. According to Diamond, in today's Iraq, a vast financial and organizational advantage has come to rest in the hand of the big parties, some of which are funded by neighboring states. In his Senate testimony, Diamond suggests that "as soon as an independent Iraqi electoral administration is established, we should help it create a transparent fund for the support (in equal amounts) of all political parties that pass a certain threshold of demonstrated popular support, and we should fund it generously (perhaps with an initial infusion of $10 [million] to $20 million)." The dollar amount notwithstanding, arranging a fund of this nature seems like a good way to avoid meddling or picking favorites while still making sure that independent parties can stay in the game.

Safeguard the independence of the electoral commission. Dunne points out that for the Iraqi people to feel ownership of the political process, the elec-

toral commission must remain free of political meddling, including any from the interim government or from outside powers. Physically securing every polling place may not be possible, Dunne suspects, but "political security" may prove just as important. "Security has to come from the Iraqi people's belief that they are participating in free and fair elections," he says.

It's been a long climb down from the glimmering hopes with which the neoconservative thinkers, at least, approached this war. Even if the aforementioned goals are achievable—and they are modest compared with the goals of a year ago—hardly anyone expects liberal democracy to smoothly follow. "Elections themselves are a polarizing event," says Dobbins. "We have to accept that." ■

Man in the Iron Mosque

Radical Sunni cleric Sheikh Mahdi al-Sumeidayih was held in Abu Ghraib prison—and he and his Salafi followers are hardly in a forgiving mood.

BY ROBERT COLLIER

IF THE AMERICAN JAILERS OF SHEIKH Mahdi al-Sumeidayih hoped to take the fire out of one of Iraq's most radical Sunni clerics, they might have been glad to hear the hesitant, almost beseeching tone in his voice less than a week after his release.

"I told them that I do not support violence, that we have nothing to do with it," al-Sumeidayih told me, recounting the constant interrogations during his five months in custody, mostly in Abu Ghraib prison. "I said we are peaceful, we have nothing against the Americans. When they asked me to go on television to state my opposition to the resistance, I said, 'I can't, I couldn't, I'm caught between two fires. The resistance would kill my wife and children.'"

He trailed off, gathered the skirts of his robe, swept out of his office, and made his way through the hundreds of worshipers waiting for him for the weekly Friday prayer service. He took the podium and listened silently to the opening ritual chanting of "Allahu akhbar" ("God is great"). Then, he began his sermon, and hellfire and damnation came open.

"I have a message from the Abu Ghraib prisoners to all Iraqis and the world!" he thundered. "What Saddam Hussein failed to do in 35 years—to unite the Iraqis against the Americans—George [W.] Bush has succeeded in doing in only one year. Each single Iraqi feels hatred and hostility toward American troops. Yes, there were some, especially young people, who thought the United States would be the great hope, the big democracy," his voice dropping to a sarcastic whisper.

"But what we experienced in Abu Ghraib will never be forgotten or forgiven. ... Believe me, not a single prisoner feels any love for America, not in the smallest amount, not anywhere in their body."

As chief imam at the Sheikh Ibn Taymeya Mosque in southwest Baghdad, al-Sumeidayih is chief of the Iraqi Salafi movement, a radical Sunni sect. The Salafis are believed by Iraqis and American officials alike to be a building block of the anti-American guerrilla resistance. But with anti-American sentiment growing fast among the general Iraqi public, the Salafis are no longer far out of the mainstream. Increasingly, they are part of it—along with their equivalent among the majority Shia, the followers of radical cleric Muqtada al-Sadr.

It is hard-line sectors like these that may matter more to the future of Iraq, at least in the short and medium terms, than the new government so painstakingly and awkwardly cobbled together by U.S. and United Nations diplomats. This new government, which took shape in early June and takes nominal control of the country June 30, will be fighting more than just a wide array of prob-

lems—from high crime and unemployment to a national power system that is still producing less electricity than under Hussein's regime. It will be fighting its own irrelevance in the streets.

The abuses of Abu Ghraib have combined with a welter of other resentments to boost the insurgency and virtually guarantee that Iraqi guerrillas of all stripes will keep killing American soldiers in significant numbers for the foreseeable future.

While there are perhaps a greater number of Iraqis who hope for a moderate, Western-style democratic future for their country, the radical Islamists are gaining, bolstered by the nationalist sentiments of Iraqis who bristle at the apparently unending presence of more than 150,000 foreign troops. An increasing number of Iraqis warn that unless the Islamists are allowed to share power in some way, rather than being marginalized and demonized, they will make the country ungovernable.

Skating carefully at the edge of what the Americans would consider incitement—which would thus guarantee his re-arrest—al-Sumeidayih cited in his sermon the "heroic victory" of the residents of Fallujah, where U.S. Marines retreated in April after three weeks of bloody urban combat against thousands of guerrillas. "The people of Fallujah say their freedom was obtained by sacrificing their blood," al-Sumeidayih said. "They want each Iraqi to realize that the resistance is legitimate."

As the faithful at Sheikh Ibn Taymeya Mosque dispersed after the end of the sermon, it was not hard to find people who sympathized (or more) with the guerrillas. Mohammed Abdullah, a tall, bearded man in traditional robes, said he was visiting from Fallujah for the day to congratulate al-Sumeidayih on his release. He said life in Fallujah had improved because the mujahideen, or holy warriors, were in control. "Security in Fallujah is very good now; it is very safe and there is no stealing, because the religious and patriotic sentiment of the people is one," he added.

But Abdullah's detailed comments on Fallujah military matters, as well as the deferential circle of people around him, indicated that he is a leader of one of the city's guerrilla cells. "There are many different groups of mujahideen in Fallujah, big and small, and we are just one of them," he said. "The people's hatred of the Americans is complete, it is total. Even people who are not involved with the struggle, who are not religious, they love death like other countries prefer life. You can feel it and touch it. Before, this [feeling] was only in Ramadan time. Now it is always."

For some Iraqis and many Westerners, the Salafis are just as fearsome as the followers of Shiite firebrand al-Sadr. Both groups advocate strict Islamic law, including the concept of the guardianship of the jurisprudent, or absolute rule by senior clergy. Their view of women's rights is highly restrictive—although not as much as the government of neighboring Saudi Arabia.

Al-Sumeidayih said that Salafis in Iraq are less extreme than their brethren in neighboring countries. In Iraq, he said, they do not generally approve of *takfir*, the extremist Muslim practice of excommunicating non-devout Muslims and permitting other Muslims to wage war against them and despoil their possessions and women.

But with Western ideals now deeply tarnished by the Abu Ghraib scandal and by the U.S. administrators' failure to provide basic services to the Iraqi public, religious fundamentalism is growing fast. "People have become much more religious because of what they have lived and seen," said Adel Mohammed, a 22-year-old laborer who says he was released in late May after eight months in U.S. detention, mostly in Abu Ghraib.

He recounted his abuse at the hands of U.S. guards—and especially, he says, by one Egyptian translator, a Coptic Christian who bragged to all prisoners, "I came to torture Muslims."

Alternating between a stolid, rock-like demeanor and tight fury, Mohammed declined to state an opinion on the guerrillas. But he insisted that the thousands of prisoners now being released in the wake of the scandal have become super-devout.

"Almost everybody has turned to God," he said. "You have no idea how much." ■

ROBERT COLLIER *is a foreign-affairs reporter for the* San Francisco Chronicle *who has traveled extensively in Iraq.*

Eastern Bloc Party

On the eve of the Iraq War, the Bush administration boasted of a great European divide. But today, Europe's united—and economically strong.

BY JIM ROSAPEPE

IF YOU WANT TO UNDERSTAND THIS year's expansion of the European Union and NATO, go to Berlin.

Fifteen years ago, the Berlin Wall, approximately 96 miles of concrete and soldiers, was the symbol of the Cold War. When I visited this spring, my taxi driver had to tell me to "imagine" where the wall had stood. Today, the new building in the center of Berlin means you literally need a historical map to find its path.

In some ways, the reunification of Berlin, and of Germany, is a special case. It was political and economic integration within one country. And it happened quickly after the fall of communism.

But the metaphor of two returning to one is nearly perfect for the wider European story: Western Europe and Eastern Europe are once again simply Europe.

Much of the commentary on this year's expansion of the European Union and NATO has focused on the communist heritage of the new members. Some cited it as the cause of their continuing difficulties. Others, including the Bush administration, pointed to their suffering under communism as the explanation of their support for George W. Bush's foreign policies.

But those observers are wrong: These Europeans are thinking much more about their futures than their pasts.

When Bush visited Bucharest in the fall of 2002, he praised the "moral clarity" of the Romanians and their fellow "new" Europeans for backing his policies in the wars on terrorism and in Iraq.

The new Europeans have many good qualities. But it is about as easy to find moral clarity in new Europe as it is to find weapons of mass destruction in Iraq. In fact, their support of Bush's Iraq policy was not driven by the "moral clarity" but by the oldest of European diplomatic motivations: self-interest and realpolitik.

In 2002, Slovenia, Slovakia, Lithuania, Latvia, Estonia, Romania, and Bulgaria were seeking U.S. support to join NATO, in each case their highest foreign-policy priority. What better way to win U.S. support than to support the United States on *its* top priority, war in Iraq?

The other three new EU members that endorsed the war, infuriating French President Jacques Chirac, were Poland, Hungary, and the Czech Republic. They had joined NATO in 1999, but still see their military alliance with the United States as the key to their security. A top Polish diplomat told me in March of this year that since Bush doesn't care about Europe, in order to get him to care about Poland, Poland had to go to war in Iraq. It makes sense. But it's realpolitik, not moral clarity.

The American image of new European nations as post-communist, struggling to recover from Soviet rule, is simply out of date. Even now I occasionally run into Americans who ask if Romania is still a communist dictatorship. (FYI: It's not.)

With eight of the 15 nations having joined the European Union on May 1, most of the rest likely to join within a decade, and 10 already in NATO, the transition from communism is over. These nations are overwhelmingly democratic, with real elections and freedom of speech and of the press.

They are also making Europe as a whole stronger, not weaker. By expanding to the east, the European Union is getting a burst of dynamism just when it really needs it. Its new members bring with them common values, high levels of education, and fast economic growth. While poor by our standards, they are rich in human resources: universal literacy, skilled workers, world-class scientists and engineers.

Their economies are largely privatized, with higher homeownership rates than in the United States or western Europe. Their banks are mostly owned by western Europeans. Their trade is overwhelmingly with the European Union, rather than Russia or the United States.

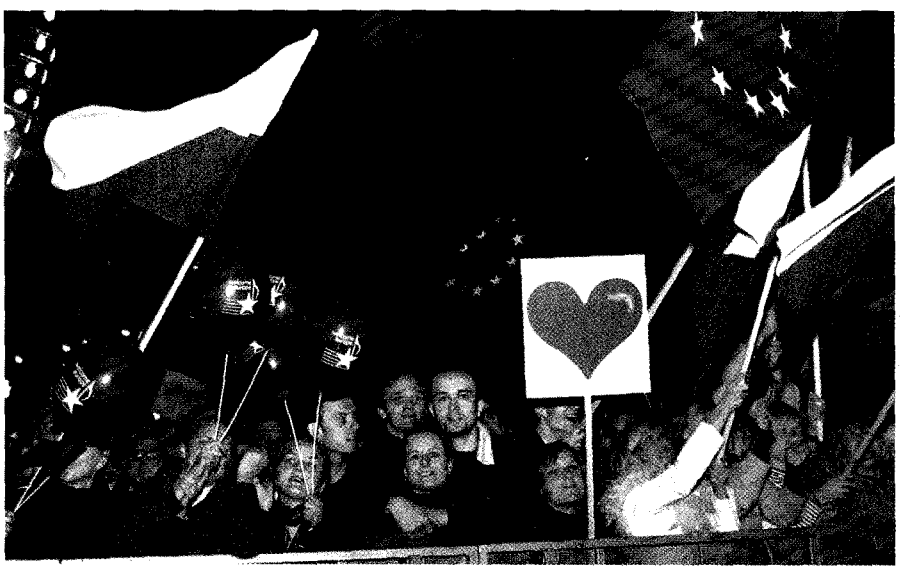
During the 1990s, new Europe's economy grew at a faster pace than did "old" Europe's. As a group, the gross domestic products of the new EU members have recovered from deep recessions since 1989. Poland's economy is more than 40 percent larger than it was in 1989. Slovenia has a higher standard of living than Portugal. In the 1990s, the two fastest growing European economies were Ireland and Albania. In 2002, the Balkans, including countries like Serbia and Bosnia, which suffered incredible ethnic violence within the last decade, had the fastest growth rate in Europe.

And things are likely to get better. To date, no country invited to join the European Union has been refused admittance. And every country that has joined has prospered. Thus, when EU invitations are extended to nonmembers like Serbia and Croatia, the invitations themselves will create powerful senses of security—and momentum—for people who, for most of the 20th century, had little of either.

When Defense Secretary Donald Rumsfeld drew a line between old and new Europe, he was right in one way: People in the new Europe are not instinctively fearful of U.S. unilateralism or hegemony. Most of them still fear Russian unilateralism or hegemony, but not American.

The nations of central and eastern Europe are joining NATO to get U.S.—not French or German—protection. In fact, they are eager to use the United States as a counterbalance to French and German power within Europe.

Nonetheless, new Europeans see themselves as full members of one European family, just as Berlin is now one city. For sentimental and practical reasons, their alliances with the United States are vitally important. To them, as to other U.S. allies, America is a beacon of freedom and a guarantor of security. But they will never be part of it, nor do they particularly want to be. Europe, or more precisely the European Union, is their future. It has the democratic values and prosperity of the United States (plus universal health insurance)—without English-only, cowboys, or capital punishment. ■



AP/WIDE WORLD PHOTO

Warsaw Pack: Poles celebrate joining the European Union in May.

JIM ROSAPEPE *is a former U.S. ambassador to Romania (1998–2001) and chairman of the investment committee of the Albanian American Enterprise Fund (1995–97). He now serves on the boards of several investment funds active in Europe.*

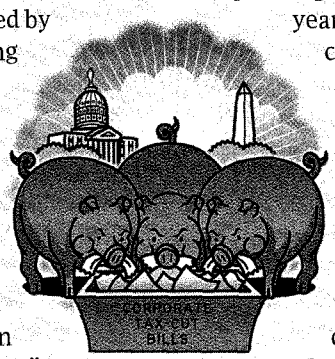
Oinkonomics?

BY ROBERT S. McINTYRE

Congress seems on the verge of enacting a major new corporate-tax giveaway bill this summer. Ostensibly designed to protect American manufacturing jobs, it will almost certainly have the opposite effect. But hardly any of our lawmakers seem to understand—or care.

These days, every dollar we add to our budget shortfall is another dollar that we have to borrow from foreigners. That in turn is another dollar that foreigners won't use to buy our exports. So if our politicians really wanted to help manufacturing jobs, they'd be working hard to attack our enormous budget deficit by rolling back George W. Bush's tax cuts and raising additional revenues wherever they can find them.

Instead, new corporate tax breaks approved by the Senate in May will likely cost a whopping $270 billion over the next decade. Similar changes pending in the House will cost even more. From the point of view of our trade deficit—not to mention budget policy—this will be a huge negative.



The press, notably *The Washington Post*, has correctly portrayed the Senate and House bills as bonanzas for corporate special interests. Likewise, Senator John McCain called the Senate bill a "shameless scam" that "has grown into a ... Christmas tree of goodies." Sadly, these salient critiques weren't enough to stop the Senate from passing its bill by a staggering 92-to-5 margin.

The bill's chief Senate sponsor, Finance Committee Chairman Chuck Grassley, led off the Senate debate by trying to answer his attackers. But his defense, which included a long list of his bill's "bipartisan" narrow-interest provisions (more than 130 by my count), inadvertently proved McCain and the press' point.

Both Grassley and the bill's chief Democratic sponsor, Senator Max Baucus of Montana, seem to have some inkling that sharply increasing the budget deficit isn't good for trade and jobs. That's why they've gone to great pains to insist that their bill at least doesn't make things worse. But their claim is false. Grassley contended that "our bipartisan manufacturing tax bill is revenue neutral ... . Not one dime is added to the current deficit." Baucus actually contrasted the Senate corporate bill with President Bush's budget chicanery. "Our current budget deficit is projected at about $521 billion this year," Baucus said. "We all know that is basically an understatement. It is going to be much worse. Why? Because [among other things], the administration's budget ... does not include the cost of making expiring tax cuts permanent. ... I say that because it is all the more reason why this bill must be budget neutral."

In truth, however, the Senate bill achieves its supposed revenue neutrality only through an array of gimmicks and extra counting. For starters, a large portion of the bill's corporate giveaways will supposedly expire after a few years. This subterfuge let Grassley and Baucus claim that the bill's new tax breaks will cost about $90 billion less over 10 years than they will without the phony sunsets. Do these guys realize how hypocritical they look to criticize previous budget shenanigans and then engage in exactly the same practice themselves?

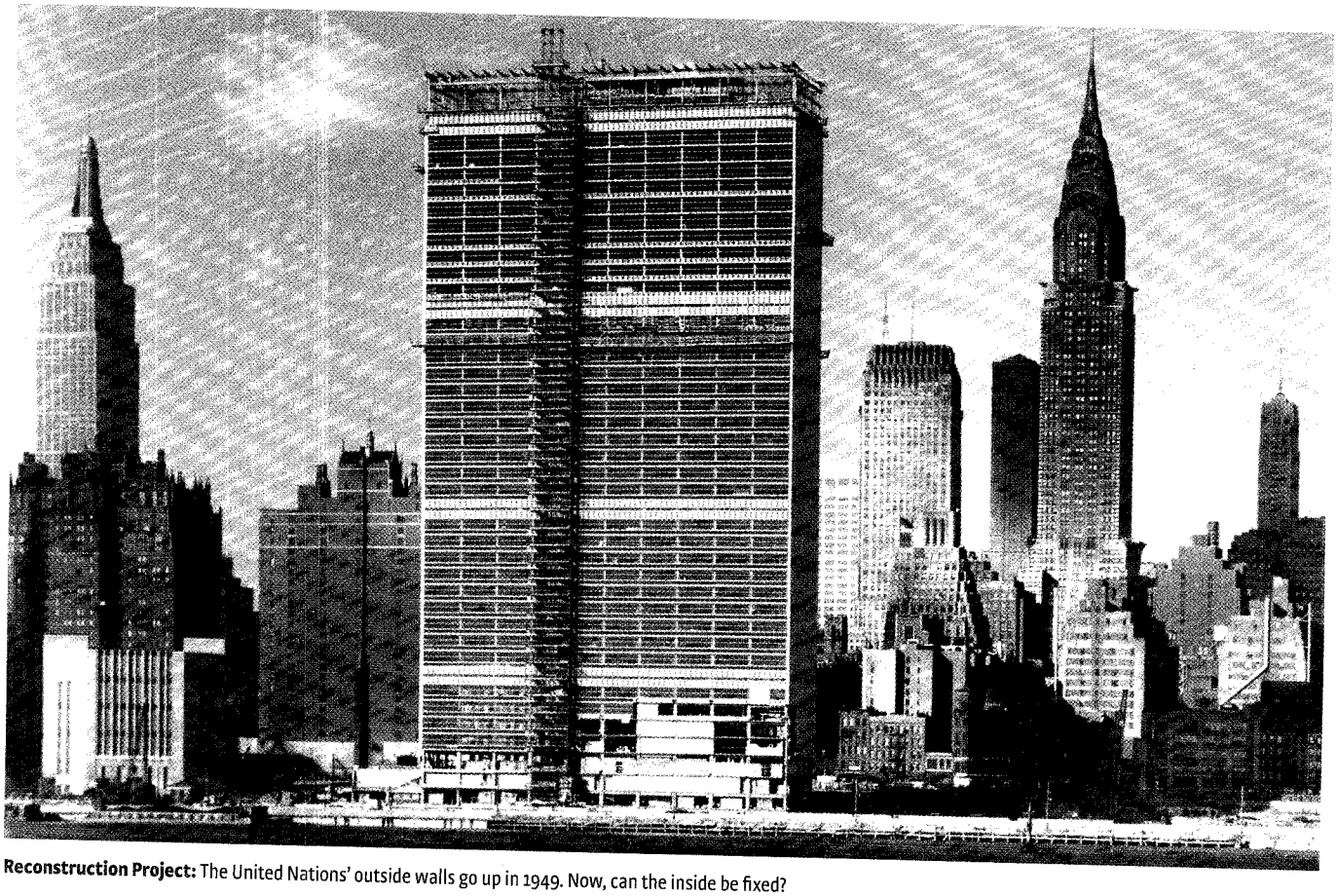
Of the $180 billion in supposed "revenue offsets" in the Senate bill, $50 billion comes from complying with a World Trade Organization ruling that a foolish tax subsidy for a few big American exporters violates our trade agreements. But why should ending an illegal subsidy be grounds for new corporate tax breaks? The remaining $130 billion reflects what Baucus accurately describes as "measures which in themselves should be good public policy and we should pass anyway"—largely curbs on egregious corporate tax shelters that Congress never intended to allow. This is like the police catching a bank robber, but then donating the stolen money to the Bank Robbers' Retirement Fund and calling the whole thing "revenue neutral."

In the House, even shadier practices are at work. To pretend that his bill is only $34 billion in the hole over 10 years, Ways and Means Chairman Bill Thomas purports, among other things, to save $127 billion from sham sunsets. But note that this year the House has blithely voted to extend some of the supposedly expiring Bush tax cuts at a cost of almost $600 billion over the next decade.

So anti-jobs corporate pork is about to trump a rational jobs policy. Oinkonomics? ■

ROBERT S. McINTYRE *is the director of Citizens for Tax Justice.*

PETER HOEY



Reconstruction Project: The United Nations' outside walls go up in 1949. Now, can the inside be fixed?

Building a Better UN

Yes, we need it. But we need it to be more effective than it has been. Can the UN fix itself?

BY LAURA ROZEN

IF ONE HAD ASKED THE LEADERS OF THE UNITED NATIONS to choose a test case through which they could demonstrate the organization's efficacy before the world, they would hardly have chosen Iraq. With a volatile security situation, too few peacekeeping troops, and a recent political history that has bitterly divided the members of the UN Security Council, Iraq is just the kind of politically charged, high-risk intervention that has recently overwhelmed the UN in places like Bosnia.

But Iraq, of course, with a strong push from the Bush administration, has chosen the UN. With the U.S. occupation officially over as of June 30, Iraq is the most watched post-war nation-building challenge in the world today—and, almost certainly, in the UN's 59-year history. "It's the highest-stakes issue out there," says Mike Pan, a former adviser to the UN chief prosecutor in Sierra Leone and currently a senior policy analyst at the Center for American Progress. "If the UN can't be useful to the U.S. here, when will the UN be useful?"

Note the phrasing there—"useful to the U.S." It says a lot about the reality of the UN's role today. Confronted with ever-expanding threats of terrorism, the proliferation of weapons of mass destruction, and a global AIDS crisis, the UN does not have the resources—or the internal consensus—to work alone. It needs the United States. And the United States needs the UN as well. The disintegration of postwar Iraq has shown that Washington, for all its sole-superpower status, can win the war militarily only to find itself losing the peace. Even the most unilateralist White House in decades has begun to see that reality.

Can the two institutions, as currently constituted, work together? It won't be easy. By the time you read this, the UN will have replaced the U.S.-led Coalition Provisional Authority as the kinder, gentler face of the Iraqi occupation. Its mandates are to bring into existence the Iraqi interim government and to organize the January 2005 national elections. But looming in the shadows from Baghdad's presidential palace will be the mammoth new 1,700-person U.S. Embassy,

along with some 150,000 U.S.–led forces on the ground and Army Major General David Petraeus overseeing training of the new Iraqi security forces. The United States, while promising to stay out of the political process, has already thrown elbows at the United Nations, specifically at UN Special Envoy Lakhdar Brahimi. Though President Bush promised to respect Brahimi's selections for the post–June 30 interim government, in late May the now-dissolved Iraqi Governing Council conspired with Coalition Provisional Authority chief Paul Bremer to elevate council member Iyad Allawi, a longtime recipient of CIA patronage, to the top post in the interim government, then publicly announced its support for Allawi before the UN's Brahimi had come to a final decision.

The Iraq War—its run-up, its duration, and its aftermath—showed us a bellicose American administration whose attitude toward the UN was one of contempt. That belligerent posture was, obviously, intentional: The people who agitated for unilateral war were many of the same people who have spent 20 years wishing that the UN would fall into the East River, and hoping that the Iraq War might start it tumbling. Their rhetoric has led multilateralists to defend the UN that much more vigorously, and that is proper—time has largely proven we-told-you-so multilateralists right.

However, there was always a grain of truth in what the unilateralists were saying: There *was*, in fact, something deeply flawed about an institution that could pass more than a dozen resolutions against a tyrannical government like Saddam Hussein's and enforce them only haphazardly; that could name a state like Libya to head its human-rights arm, as the UN did in January 2003; and whose chief governing body, the Security Council, was as open to dictatorships as to democracies. So while multilateralists should be defending the UN, they should also be aware that the best way to save—indeed, to strengthen—an embattled institution is to acknowledge its shortcomings and deal with them.

Is the UN capable of reforming itself?

IRAQ REPRESENTED THE THIRD INTERVENTION IN THE LAST 10 years that the United States and "coalitions of the willing" had pursued without explicit Security Council authorization. The first two followed the UN's two massive failures of the 1990s: its failure to stop the genocide of more than 800,000 people in Rwanda in 1994 and its standing by while more than 7,000 Muslims were killed in the UN "safe haven" of Srebrenica, Bosnia, in July 1995.

In the wake of these failures, Secretary-General Kofi Annan created a reform agenda, which focused largely on how the UN could become a better peacekeeping institution, and created commissions, chaired by former Algerian Foreign Minister Brahimi and Australian Foreign Minister Gareth Evans. The Brahimi report on UN peacekeeping, released in 2000, was revolutionary: It recommended that the UN should take on less rather than try to do everything and fail miserably. The report suggested that the UN needed to more specifically define its goals for intervention and accept only the missions it has the political will and military resources to achieve.

"The Brahimi report finally provided an inventory of what the UN could and couldn't do," says the Center for American Progress' Pan. "A lot of people realized the limitations that it would have in doing peacekeeping. That was a sobering analysis but a good one. That sort of stocktaking had never been done before."

Just as Annan was working toward these goals, George W. Bush came into office, staking out a starkly unilateralist position and signaling disdain for nation building and the kinds of post-conflict activities the UN had successfully undertaken in postwar Bosnia, Kosovo, and East Timor. After the attacks of September 11, Washington felt increasingly entitled to bypass the UN and ignore world opinion in pursuit of national security, plunging the UN further into existential crisis.

Wisely, Annan recognized that he had to begin to act—or at least speak—dramatically to save his organization from irrelevance. He gave a major speech on September 22, 2003, suggesting that the body's rules of engagement might be updated. "The [Security] Council needs to consider how it will deal with the possibility that individual states may use force preemptively against perceived threats," Annan said. "Its members may need to begin a discussion on the criteria for an early authorization of coercive measures to address certain types of threats—for instance, terrorist groups armed with weapons of mass destruction—and ... the best way to respond to threats of genocide." He highlighted two key internal reforms: defining the criteria for international intervention and reconstituting the Security Council to prevent the automatic veto of such interventions.

To the first end, Annan has created a commission—the High-Level Panel on Threats, Challenges and Change—which is charged with defining the criteria for intervention. The panel is addressing questions like whether the UN may invade a country to prevent mass abuse of that country's citizens by its leaders, under what circumstances, and at whose request. (Such meddling was prohibited in the UN Charter, and Annan created an uproar in 1999 when he suggested that borders should not be inviolable in emergency humanitarian situations.) In developing such a set of criteria, the panel will try to disentangle one of the UN's most tricky knots: How can an institution whose own conventions mandate action to stop genocide authorize action that violates the sovereignty of the nation state—a system of sovereignty that is, after all, the central girding of the UN system?

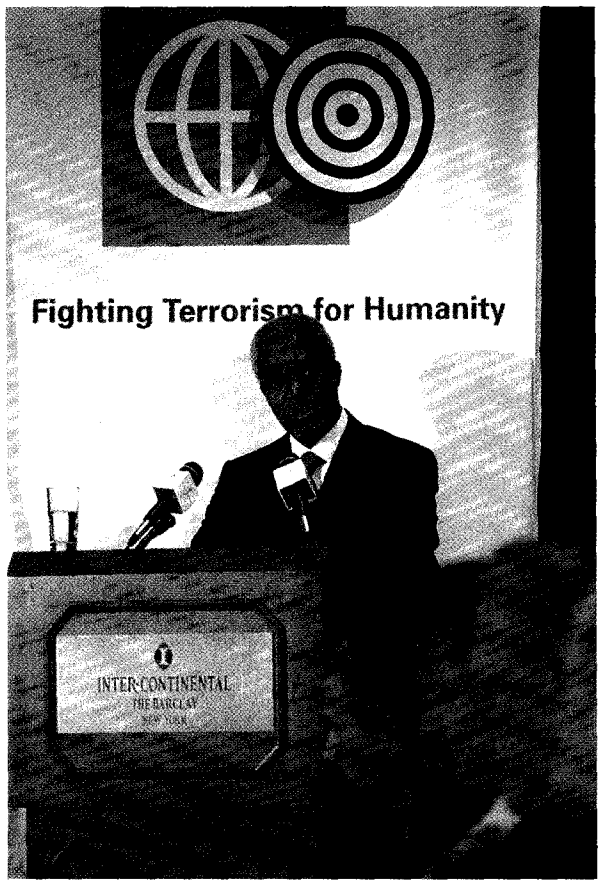
But whatever criteria member nations might agree to here on paper, the fact remains that actually following through on any such framework will be hard work, and that's because of the setup of the Security Council. The five permanent members (P5)—the United States, Russia, China, Britain, and France—can single-handedly veto any action, so it should come as no surprise that the five have agreed to authorize the use of force only once, for the Gulf War invasion of Iraq (if there's a surprise here, it's that they've agreed even one time). So Security Council reform is paramount.

The Security Council is structured as it is for good historical reasons. When Franklin Delano Roosevelt conceived the UN and organized its founding session in San Francisco in 1945 (the session was held just after FDR's untimely death), the premise was that the "great powers," then wartime allies, needed to act in concert in order to keep the peace. That assumption was overtaken by events within just three years,

and Soviet vetoes became a chronic stumbling block.

The two ideas most often proposed for Security Council reform are expanding the body's permanent membership—to include India, Japan, or Brazil, for instance—and modifying the veto power away from unilateralism. But the five permanent members don't support changes to a system that now gives them so much power. And, even if they were willing, it'd be hard to get consensus on how many new permanent seats there should be and who should fill them. The UN has been studying this issue for a decade, through an "open-ended" working group that reports back to the secretary-general regularly. Even with expansion or reform, however, it's not entirely clear what the council could be expected to do. If it were expanded or the veto eliminated, for instance, effective UN engagement in major peacekeeping operations would still require the consensus and collaboration of the United States and other major powers. Otherwise, the United States and/or NATO would simply continue to proceed around the UN.

But even if the UN manages to define its terms of engagement more sharply and pare its mission to manageable size, it has another problem that taints both its legitimacy and its efficacy: the unpleasant fact that so many of its members are dictatorships and human-rights abusers themselves. Why would Sudan vote for the UN to authorize intervention to stop genocide? When would China ever vote for the use of force to prevent Slobodan Milosevic's crackdown on Kosovo's ethnic Albanians? And, of course, there is the organization's anti-Israel tilt, which, whatever Israel's transgressions in the occupied territories, is undeniable and at times has been lurid. The irony is that what makes the UN so friendly to dictatorships is the fact that its General Assembly membership is strictly democratic—one state, one vote.



Kofi Klatsch: Annan speaking on counterterrorism, September 2003

Meanwhile, membership to smaller bodies, such as the UN High Commission for Human Rights, is determined on a regional basis, which leads to situations like the one in which Libya was chosen as the commission's chair while the United States was voted off entirely; and, more recently, in which Sudan, where government-backed militias have forced more than a million people to flee their homes, was voted on to the commission in May 2002. About 20 of the 53 members of the human-rights commission are not democracies.

Such outrages have forced the issue of democratic reform onto the agenda. An interesting collection of American human-rights groups we normally think of as liberal have joined conservative institutions like The Heritage Foundation, Human Rights Watch, and Freedom House to promote an initiative that would create a caucus of democracies at the UN. The "democracy caucus"—which is related to another body, the Community of Democracies, founded in Warsaw in 2000 under the watch of U.S. Secretary of State Madeleine Albright—would strategize on important votes and work to get democracies elected to UN commissions, much the way dictatorships like Cuba, Libya, Sudan, and Zimbabwe strategize on getting their buddies elected. California Representatives Tom Lantos, a Democrat, and David Dreier, a Republican, have co-sponsored legislation that would require the State Department to seek reform of UN bodies so that no dictatorships could be elected onto UN commissions. The bill has passed the House, and Lantos anticipates that the legislation will pass the Senate and go to the president later this year.

CLEARLY, SUCH A DEMOCRACY caucus would be a grand thing, were one to emerge and actually become an effective bloc. Fostering democracy has only ever been an implicit part of the UN's mission, as the body's organizers knew from the start that so many of its member states would not be democracies. But after 9-11, as we have witnessed so starkly the acts of which autocracies and theocracies are capable, it seems the time for democracy promotion may have come. And it would be nice to see Democrats and liberals—the multilateralists who actually care about the UN surviving and flourishing—take the lead.

But that's not exactly what's happening. Over the last decade, Democrats have been alternately torn by two conflicting tendencies: to defend the UN, because it is essentially "their" organization in domestic political terms, and to run away from it when it starts looking like an albatross. The latter happened with the Bosnian debacle, when many a human-rights activist began to look in earnest for alternatives to the UN. They turned to NATO for more effective action. Forget neutrality and good offices, they thought; in the Balkans, precision bombs would more swiftly promote justice. Leading this charge was a group that emerged as an increasingly hawkish wing of the Democratic Party: Albright, former U.S. Ambassador to the UN Richard Holbrooke, former NATO Supreme Allied Commander for Europe Wesley Clark, and philanthropist George Soros, among them. Indeed, it was two Clinton-era ambassadors to the UN, Holbrooke and Albright, who turned out to be among the greatest advocates of using NATO to

RICHARD DREW/BLOOMBERG NEWS/LANDOV

stop Serbian war crimes in the Balkans without explicit UN Security Council authorization.

It's not hard to see why. There's the practical advantage that NATO is likely to act more quickly at crisis times. Beyond that, there is, for Democrats, a clear domestic political appeal in invoking NATO over the UN: Talking about the UN and multilateralism makes them look weak. "'Multilateralism' is code for getting the whole world together and singing 'Kumbaya,'" a staffer who works for a prominent Senate Democrat told me. "When we use words like 'UN,' it's code for softheadedness, and the Republicans and White House get traction on it. ... It's important that we use words like 'NATO' and 'P5' to talk about institutions that are considered more effective."

But the more common stance—one adopted, recently and notably, as the Bush administration was running roughshod in the fall of 2002 over both Democrats in Congress and the UN—has been that of defending the UN from Republican attacks. "The reason that most Democrats didn't get out in front of pushing for reform is they were always in the defensive mode," says Bill Stuebner, a former U.S. military official assigned to work with the UN in Bosnia and now executive director of the Alliance for International Conflict Prevention and Resolution. "Republicans are naturally in the position to go on the attack and demand reform."

"'Multilateralism' is code for getting the world together and singing 'Kumbaya,'" says a Senate Democratic staffer. "The GOP and White House get traction on it."

And they have. The demands for reform from conservatives are ubiquitous. From Richard Perle and David Frum to the American Enterprise Institute's Joshua Muravchik, neoconservatives have been writing about and hosting conferences on UN reform, addressing such topics as U.S.–UN relations, the UN's anti-Israel bias, and how dictatorships and human-rights abusers seem to flourish at the UN. Of course, these calls for reform don't really have the UN's best interests in mind. Mostly neocons would like to see the United States find a way to bypass the UN entirely, or have it focus on humanitarian operations like housing refugees. And congressional Republicans who have called for reform have also had ulterior motives that had nothing to do with making the UN more effective. These lawmakers, led by then–Majority Leader Newt Gingrich and Senator Jesse Helms, blocked payment of almost $1 billion in back dues Washington owed the UN until the organization "reformed"—that is, until the UN stopped funding international family-planning organizations that counseled abortion and until the United States was assessed a smaller percentage of UN dues.

DISMANTLING THE UN WOULD, OF COURSE, BE A GRAVE mistake. In historical terms, it is still mankind's most universal and sustained attempt—Woodrow Wilson's League of Nations existed between the two world wars, but its influence on world affairs was limited, and the United States never joined—to establish transnational and transcultural norms of behavior and justice. It is also relatively young, and its imprimatur still imparts legitimacy and cover to international operations.

Which brings us back to Iraq. Suddenly, after three years of snubbing the international community, Bush has dug himself into a situation that requires rescue by a multinational force with the imprimatur of the world. The administration, says Tim Wirth, president of the United Nations Foundation and a former Democratic senator from Colorado, "is coming to understand that, properly managed, the relationship with the UN can be enormously valuable to the U.S." And the UN, despite its flaws, is the one organization that truly represents the community of nations. So, like an atheist in a foxhole, Bush has returned to the fold, adopting a position much like John Kerry's, which is to internationalize the Iraq occupation. These days Bush publicly sends his congratulations to Annan on selecting the interim government in Iraq, and "encourage[s] other UN members to join in the effort of building a free Iraq."

Regardless of the cynicism of this embrace, Iraq presents an important moment for the UN as it tries to reform itself and its relationship with the United States. "The UN can't do this without the U.S., but I'm going to modestly suggest—or immodestly suggest—that the U.S. can't do it without the UN," Mark Malloch Brown, the head of the United Nations Development Program, said at a May 5 conference at the American Enterprise Institute. "The partnership is absolutely indispensable, not least because it needs the political authority of the world's leading power, but it often needs the trust and neutrality of the UN to undertake these difficult, difficult, sensitive tasks of building the new institutions in a way that all parties to a conflict trust."

In the worst case, Iraq will become another situation in which the UN will be in over its head, unable to cope with the requirements of a volatile postwar situation and dependent on the United States and its collected allies for help, once again proving how little it can really accomplish on its own.

But in the best case, this could be a moment when the United Nations and the United States are desperate enough—a sort of mutually assured destruction—to actually work hand in hand. Such partnership has some precedent in recent years, in innovative "hybrid" UN missions in Sierra Leone, East Timor, Kosovo, and Afghanistan. In these places, a single nation or alliance—such as Australia in the case of East Timor, or the British in Sierra Leone—provides the troops and the UN provides political, humanitarian, and reconstruction assistance. In a way, as the Brahimi report recommended, the UN has found it can be more effective where it acknowledges from the outset that it will do less. The real question is whether it can work when that partner is not a relatively small and trusted country but the powerful, and disliked, United States. ■

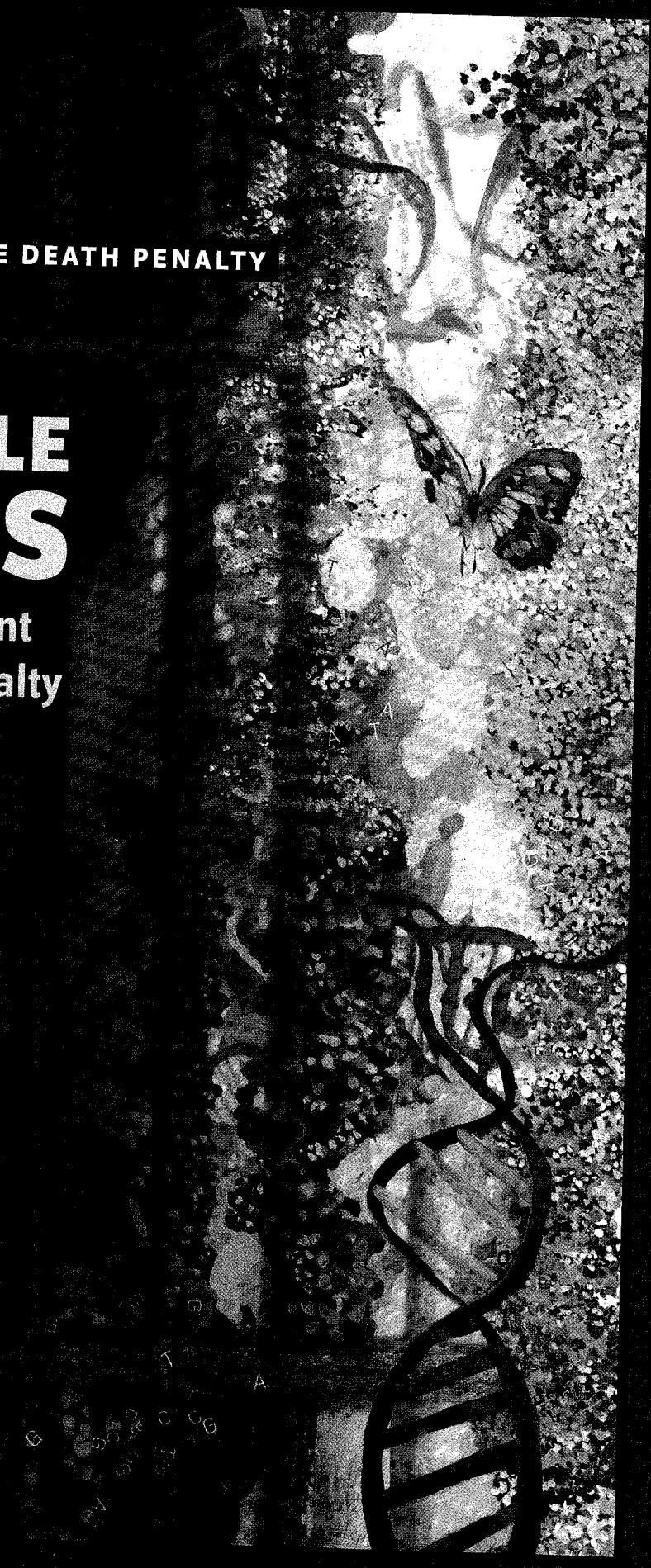
LAURA ROZEN *is a freelance journalist who writes on foreign policy from Washington, D.C.*

A SPECIAL REPORT ON THE DEATH PENALTY

REASONABLE DOUBTS

The growing movement against the death penalty

Hugo Adam Bedau
Anthony G. Amsterdam
Connie de la Vega
Jean M. Templeton
Christina Swarns
Tom Lowenstein
Sasha Abramsky
Joseph Rosenbloom



JULY 2004

WWW.PROSPECT.ORG

Life After Death

WHY A WHOLE SPECIAL REPORT ON THE death penalty? For one thing, the growing movement to reform and eventually abolish capital punishment in America suggests that heterodox currents are alive and thriving in these seemingly conservative times. For another, the movement against the death penalty offers a wider window on reform of the criminal-justice system generally.

Thanks in part to DNA evidence exonerating more than a hundred Americans wrongfully sent to death row, the broad public is questioning the logic of the death penalty itself. Families of murder victims are among those leading the challenge. And it was a conservative Republican governor, George Ryan of Illinois, who was so appalled by the findings of his own death-penalty commission that he commuted the sentences of everyone on that state's death row, pending broad reforms.

The first of those reforms, now implemented, requires videotaping of confessions and sequential lineups of suspects. Why? Because police have been known to manipulate prisoners into making false confessions. Because it is too easy for prosecutors to put a favorite suspect into a lineup with dissimilar ringers. And because eyewitnesses make mistakes. Yet the flaws and injustices of the death penalty are so intrinsic that it is hard to investigate seriously without concluding that the only real cure is abolition.

Beyond procedural reforms, the American public and the courts are entertaining serious doubts about whether the state should ever take a life, even if it is sure that it has the right person. And although the courts are increasingly stacked with hard-liners, the U.S. Supreme Court in June 2002 voted that mentally retarded people should be spared execution, and it may well hold similarly regarding juveniles. Likewise the citizenry: Two Oklahoma juries could not conclude that the state should execute convicted bomber Terry Nichols.

Punishments short of execution are, of course, reversible. But many of the same reforms—improved representation of defendants, videotaped confessions, sequential lineups—are needed to prevent other miscarriages of justice.

The death penalty is not only the ultimate punishment; it is also one of the most arbitrary. This special report, produced in partnership with the JEHT Foundation, examines the death penalty in its multiple facets: the movement for reform as well as the resistance to change; the dynamics of who ends up on death row; the status of America as an international outlier. It was edited by Dorian Friedman and Robert Kuttner. For more information on capital punishment, visit our special Web site at www.movingideas.org/issuesindepth/.

Dostoyevsky wrote, "The degree of civilization in a society can be judged by entering its prisons." By that test, Abu Ghraib indicts not just our military guards and our generals but our domestic prison system and our society. Yet in entering the very bleakest corner of American prisons—death row—we see not only barbarism but hope.

—ROBERT KUTTNER

CONTENTS

A3 DEATH'S DWINDLING DOMINION
Public opinion is shifting against the death penalty. What will it take to abolish it?
By Hugo Adam Bedau

A5 121 DAYS OLD
Nick Yarris' new life after he was freed from death row
By Tom Lowenstein

A8 SHUTTING DOWN DEATH ROW
Illinois' death-penalty reforms may presage a fairer criminal-justice system.
By Jean M. Templeton

A11 THE UNIQUE BRUTALITY OF TEXAS
Why the Lone Star State leads the nation in executions
By Joseph Rosenbloom

A14 THE UNEVEN SCALES OF CAPITAL JUSTICE
How race and class affect who ends up on death row
By Christina Swarns

A16 TAKING JUVENILES OFF DEATH ROW
Must we permit the execution of young offenders? The Supreme Court revisits that important question later this year.
By Sasha Abramsky

A19 COURTROOM CONTORTIONS
How America's application of the death penalty erodes "equal justice under law."
By Anthony G. Amsterdam

A22 GOING IT ALONE
The rest of the civilized world has abolished the death penalty.
By Connie de la Vega

SPECIAL REPORT COVER: McDAVID HENDERSON

AP/WIDE WORLD PHOTO

Death's Dwindling Dominion

Public opinion is shifting against the death penalty. What will it take to abolish it?

BY HUGO ADAM BEDAU

As we enter the 21st century, Americans have never been more divided over the proper role of the death penalty. Some of us (still a minority) would like to see it entirely abolished—and we have achieved this goal in a dozen states, beginning with Michigan in 1847 and most recently in Vermont in 1987.

At the other extreme, a smaller minority wants an expanded death penalty—a goal unlikely to be achieved given recent DNA findings, court rulings, and shifts in public opinion. A plurality of the public at present believes there is a proper, albeit rather narrow, role for capital punishment, confined to the most egregious crimes, notably first-degree murder with multiple victims, serial killings, terrorism, or murder committed by a recidivist. Such support weakens still further when respondents are offered the alternative sentence of life without parole. In the face of these facts, America's seeming infatuation with the death penalty looks about an inch deep and a good deal less than a mile wide.

Defenders of execution typically rest their case largely on three grounds: deterrence, incapacitation, and retribution. When the death penalty was a lawful punishment for many different crimes (as recently as the 1960s), deterrence and incapacitation were the primary rationales. But today, empirical support for any special deterrent effect receives little or no endorsement from the nation's professional criminologists. And even if there were some such effect, society is not entitled to that benefit as long as criminal-justice systems operate with gross unfairness in deciding who should receive a death sentence. As for incapacitation, the experience in a dozen abolition states and internationally shows that convicted murderers can be safely incarcerated and need not be executed in order to prevent them from being a threat to the public (or to guards, visitors, or other prisoners).

Retribution is another matter. Because it is not an empirical principle, retribution cannot be defended or criticized on empirical grounds. Instead, the case for retribution rests on moral considerations, chiefly the proposition that murderers deserve to die. The rebuttal from abolitionists often takes the form of a challenge: Do rapists deserve to be raped? Do kidnappers deserve to lose their children? Should arsonists have their dwellings burnt? If they should, why don't our laws reflect this fact? If they shouldn't, why do we make an exception in the case of murder? All parties to the death-penalty controversy must agree that in the vast number of cases where crimes are punished under law, there is simply no way to tell, a priori, exactly what an offender "deserves." What punishment does an embezzler deserve? How about an unlicensed deer hunter? Answering questions about desert in the abstract is virtually impossible. No wonder our criminal-justice system confines the role of desert to answering the question, who deserves to be punished? (Answer: the guilty.) That leaves the other question—what punishment does the offender deserve?—to criteria set by legislatures and courts.

Many who might naturally be the most vocal in demanding retribution in fact turn out to oppose the death penalty. Murder Victims' Families for Reconciliation, for example, has become a leading opposition voice in the debate over capital punishment.

Opponents of the death penalty typically rely on three main moral principles. First, there is the right to life. Even if this right is not absolute, it places a heavy burden on the practice of execution by the state. Second is the principle that the administration of any criminal-justice system must be fair. Yet fairness in the se-

lection process—who shall live and who shall die—is routinely undermined by such widespread practices as the provision of incompetent defense counsel and racial bias, which increase the risk that innocent defendants will be executed. Third, there is the principle that governments ought to use no more violence in pursuit of a just end than is necessary to achieve that end (and there is accumulating evidence that the death penalty serves no necessary criminal-justice purpose).

Canada, Mexico, and all European nations (as well as many other countries) no longer use capital punishment. Our professed global advocacy of human rights becomes suspect when one considers the extent to which our government tolerates a death-penalty system that looks to many other nations like flagrant indifference to the international law of human rights.

PUBLIC POLICY ON THE DEATH PENALTY IS NOT DETERmined only by public opinion, empirical evidence, or moral principles. Our appellate courts, notably the state supreme courts and the U.S. Supreme Court, have modified many aspects of capital jurisprudence by constitutional interpretation. The most recent such narrowing occurred in 2002, when the Court ruled that a person suffering from mental retardation could not be subject to a death sentence. The next most likely such limitation will come in the form of barring the execution of juveniles (persons under 18 at the time of the crime)—a prohibition endorsed years ago by most nations and guaranteed in the laws of more than two dozen American death-penalty jurisdictions. Both of these issues represent important practical constraints, even if they fall short of a constitutional prohibition of capital punishment.

In recent years, public opposition to the death penalty has been chiefly focused on the risk of executing the innocent and on the narrow escapes of death-row convicts who had the good fortune to have their innocence vindicated before a death sentence could be carried out. During 2002 and 2003, national attention was concentrated on Illinois, where Governor George Ryan imposed a moratorium on executions and created a special commission to recommend improvements in the administration of the death penalty. As he left office, Governor Ryan stunned the nation by canceling all of Illinois' death sentences on the ground that the system that produced them was too flawed, too unreliable to accept its product.

During the past decade or so, arguments over the innocence of death-row convicts (as well as of many other prisoners) have taken on a new form thanks to the development of DNA testing. Both sides of the death-penalty controversy have effectively agreed to abide by the results of such tests, thereby removing the controversy over innocence in particular cases to a level of scientific objectivity hitherto unavailable. Unfortunately, however, DNA testing is often of no use in the kind of case that gives rise to most of the worst errors in capital cases: a conviction based on perjured testimony, incompetence of the trial attorney, unavailability of expert witnesses, or racial bias in the police station, prosecutor's office, or jury room.

Opponents of the death penalty confidently insist that it is just a matter of time before a well-documented case occurs in which an innocent defendant is executed. Friends of the death penalty take comfort in their belief that, so far, there is no case on record (in recent times) in which the innocence of the executed prisoner is beyond doubt. Meanwhile, it remains unclear whether the moratorium created in Illinois will prove to be the vanguard of a national movement or only a singular exception (as it has been so far) owing to the large number of documented cases of innocents on Illinois' death row.

WHAT ARE THE PROSPECTS FOR THE FUTURE OF the death penalty in the United States? Although states like Texas seem as wedded to capital punishment as ever, the realization that hundreds of innocent prisoners have been on death row has caused an overdue shift in public opinion and public policy.

In addition to court rulings and state laws limiting capital punishment, 13 states have recently set up death-penalty commissions. The North Carolina Senate passed a bill in 2003 imposing a moratorium on executions until troubling issues of fairness, due process, and racial bias are addressed. Last year, there were fewer executions (65) than in the modern peak year of 1999, and outside the Deep South only three states carried out any executions. Even in Texas, the state most vigorously committed to capital punishment, the Senate passed a bill to create an innocence commission. Texas Governor Rick Perry signed legislation providing $20 million for legal defense of indigent defendants in capital cases. At the federal level, the House—by a margin of 357 to 67—passed the bipartisan Innocence Protection Act, including funding for DNA testing and grants to states to improve the quality of legal defense for those who could face the death penalty. The Senate is expected to take up the bill.

So, rather than a complete end to the death penalty in the near future, we may see a gradual narrowing and a de facto semi-abolition. This would represent progress. A century ago lynching flourished in the Deep South, and the rest of the nation struggled to bring it to an end. Perhaps before too long we may come to regard the death penalty with the same horror with which we have learned to view lynching. The only way in which the nation as a whole could rid itself of the death penalty is by federal constitutional interpretation, relying on such principles as equal protection of the law, due process of law, and the prohibition against cruel and unusual punishment. However, given the conservative mood of the Supreme Court, these piecemeal reforms and narrowings, though heartening, are not likely to lead to complete repeal anytime soon. The late Supreme Court Justice Thurgood Marshall was right: The more one learns about the death penalty, the less inclined one is to support it. The slender majority of the public that still supports executions is unlikely to see its numbers grow.

The several essays in the pages that follow take the argument against the death penalty into greater detail. Their cumulative effect makes a strong case for national abolition, and the sooner the better. ■

HUGO ADAM BEDAU *is a philosophy professor emeritus at Tufts University and editor of* The Death Penalty in America.

AP/WIDE WORLD PHOTO

Nick of Time: Yarris meets the press at the State Correctional Institution at Greene.

121 Days Old

Nick Yarris' new life after he was freed from death row

BY TOM LOWENSTEIN

IF YOU'D ASKED NICK YARRIS HOW OLD HE WAS, ON May 17, 2004—his 43rd birthday—he'd have told you, "121 days." For the rest of his life, Yarris will have his regular birthday and the day he was born again: January 16, 2004, the day he walked out of the Pennsylvania State Correctional Institution at Greene a free man after 22 years on death row.

That birth had a long labor of its own, starting probably at age 7, when Yarris was sexually assaulted by a neighborhood predator. By 18 he was a tough high-school dropout, using drugs to protect himself from, as he puts it, his core having been stripped away from him. He dealt drugs, robbed people. In 1981, at age 20, Yarris got busted in a stolen car, wrestled with the officer who tried to arrest him, and ended up in jail, where, desperate to get out from under the charges and going through cold-turkey withdrawal from methamphetamine addiction, he told police that he knew who had killed Linda Mae Craig, a Boothwyn, Pennsylvania, woman who was kidnapped, raped, and murdered in 1981. He tried to pin the murder on a dead guy, but the guy was alive and well, and had a good alibi. So the police came after Yarris; awhile later, a jailhouse informant sought Yarris out and then told police that Yarris had confessed to him. Yarris was convicted and sentenced to death in 1982.

In 1988, he became one of the first prison inmates in the country to push for DNA testing, insisting that it would prove his innocence. Fifteen years later, on July 2, 2003, he heard that the DNA found on the victim's clothing didn't match his and knew that he was going home. For the first time, he broke down completely, and the guards put him in the shower so he could collect himself. When he got back to his cell, he was at peace with himself. He knew it'd be awhile yet, that these things move slowly, but that he would be free someday soon.

The district attorney in Delaware County, Pennsylvania, where Yarris had been convicted, impaneled a grand jury to look into the case. It took another 120 days for the DA to finally drop the charges. But there were still outstanding charges against Yarris in Florida, too. (In 1985, on his way to a court hearing, Yarris had escaped from custody in Pennsylvania and found his way to Florida, where he'd robbed people and

tried to get a fake passport to get out of the country.)

Eventually, the Florida authorities credited the time he'd served in Pennsylvania. On Monday, January 12, the guards told him to pack his stuff, he was going home. But the paperwork wasn't all done. On Tuesday and Wednesday they told him, "For real, you're going." On Thursday they said, "You're going in five minutes." Every day Yarris' family and friends heard on the radio that he was getting out. Friday at 8 a.m. the guards put him in a van and took him out a side sally port so he wouldn't talk to the press that was gathered in front of the tall, glass foyer of the visitor's entrance at the prison. But then word came that his Florida paperwork still wasn't done, so they took him back inside again. The delays were getting tedious, Yarris thought. As he waited in the intake unit at Greene for four and a half hours that Friday morning, guards from all over the institution came over to congratulate him on how he'd carried himself while in prison.

Finally the paperwork was done, and as Yarris went to sign the paper for the state of Florida, telling authorities where he was going to be living, he asked, "What if I don't sign it?"

"Please, Mr. Yarris," the woman signing him out said. "There's been enough drama for one day. Don't start."

Yarris took the 29-cent pen he used to sign that document with him as a souvenir. The prison officials didn't bother with the van this time, and it was just past noon when he walked out, greeted his parents and some friends.

His sister, who lived at the other end of the state and couldn't make it out to Greene that day, called their mother's cell phone. Yarris had never held one before. He started pressing buttons madly, not knowing that the "on" button meant "talk." He and his sister had been estranged for 20 years—being in prison puts up lots of kinds of barriers between you and your family, and she had been ashamed, had believed he was guilty. But for a while now she'd known he was innocent, and when he heard her voice they started singing Bob Dylan's "Positively Fourth Street" together. It had been their song, back before his murder conviction.

Yarris went to his parents' hotel and just stood in the parking lot, staring out at the snow-covered landscape. He felt like he was breathing after holding his breath for a long time, like everything had a taste—except the shrimp he ordered at the Cracker Barrel restaurant he went to with his family. He was too caught up in the strangeness of the world to taste those at all. He went outside with his father for a couple of minutes and noticed how loud the world was—the whisper of the tires of passing cars was very loud to him.

Back inside, he asked if his father had one of the new $20 bills with all the fancy stuff on it, and when his father gave him one to look at, he pocketed it.

"What're you doing?" his father asked.

"Duh!" Yarris said, and the whole family laughed. That became their punch line for the day—a few minutes later he tried to use his souvenir pen, and it didn't work. "Duh!" they all said, laughing.

It was time to drive the five and a half hours home to Philadelphia. Yarris was on the cell phone most of the way, calling friends. When they got to his parents' house the press was there, waiting for him. He sneaked inside to put on his Eagles hat, then came out to talk. Dealing with the press didn't bother him until later, when he sat with family members to watch the news coverage and saw himself on TV.

"I thought I looked old, and it really bothered me," he says. "I felt like a stranger in my own skin. It bothered me that [my family members] were watching me."

That night, at his parents' house in Philadelphia, it was hard to reconnect with all the strangers who were his family, to meet nieces and nephews for the first time. Yarris felt bad because everyone in the family wanted to hug him and he had no idea how to tell them how hard it was to deal with people touching him. No one had touched him for 14 years—death-row inmates aren't allowed physical contact with anyone—and he felt as if his body were vibrating from all the hugs. One niece kept touching him with her cold hands, and he'd overdramatize how cold they were, and the kids would laugh. That was amazing.

In 1988, Yarris became one of the first prison inmates to push for DNA testing; 15 years later, it paid off.

Later, the family dispersed and Yarris went upstairs. He was supposed to sleep in his younger brother's bed. It was a hard reminder of something death row had taken from him: some kind of life with his younger brother, who had died of a drug overdose in August of 2002 (Yarris hadn't been allowed to go to the funeral). So he spent his first night of freedom in his childhood bedroom, hardly sleeping, visited by his younger brother's ghost.

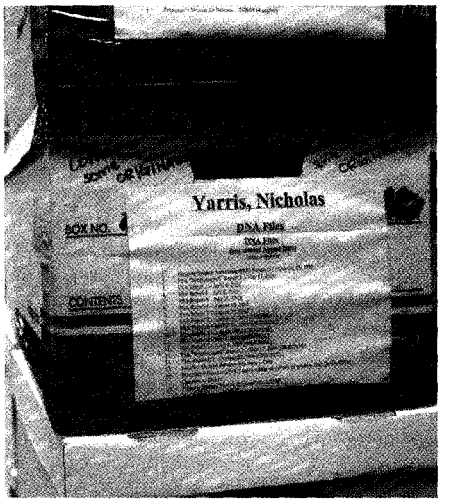
IN ADDITION TO HAVING A NEW BIRTHDAY, YARRIS HAS a number for the rest of his life, a kind of badge of honor: He's the 112th person exonerated from death row since 1973, when executions resumed in the United States. As death-penalty supporters try desperately to fashion a system for executions that is at once fair, timely, and error-free, the ever-increasing number of exonerations (No. 114 was freed earlier this year) has raised public awareness of just how broken the current system is.

No formal studies have been done on the long-term effect of such awareness. In Texas, for example, polls show that while a majority of people believe an innocent person may have been executed in that state, a majority still support the death penalty. In Illinois, by contrast, the exonerations led then-Governor George Ryan to halt executions and, eventually, to commute all the death sentences in his state. But several of the states with the highest death-row populations seem to have the most arbitrary and unfair systems. Texas just executed a mentally ill man after the Board of Pardons and Paroles voted 5 to 1 for commutation; Florida has had 23 exonerations since 1973; and in Pennsylvania, 70 percent of the 200-plus people on death row are minorities.

While some much-needed reforms to the death-penalty system wind slowly through the legal process, some politi-

cians are pursuing the perfect death penalty. In Massachusetts, the growing number of exonerations nationwide led Governor Mitt Romney, who has made reinstituting the death penalty a priority of his administration, to appoint a commission to come up with an infallible death-penalty system. The commission's proposal includes using DNA testing, the silver bullet of many exonerations, to ensure that any capital convictions meet a new "beyond all doubt" standard of guilt. With DNA testing available in only a fraction of murder cases, however, the proposal creates a penalty that would apply to so few murders that even death-penalty proponents question if it would be worth the time and expense necessary to create such a system.

Importantly, an increased awareness of problems in the death-penalty system has helped bring attention to broader issues in our justice system. Perhaps the two most common reasons for convictions of innocent people in capital cases have been mistaken eyewitness testimony and jailhouse snitches, who are routinely given deals by prosecutors in return for unsubstantiated stories. We have also been forced to focus on difficult realities: People do confess to crimes they didn't commit; the way police conduct lineups and show pictures to witnesses profoundly influences whom the witnesses identify; and the victims-rights movement is all too often a tool used by states to support some victims (those who want the death penalty) and ignore others (those who don't). Anti–death-penalty activists are now pushing for reforms in police identification procedures, in the use of jailhouse-snitch testimony, and in having all interviews in murder cases videotaped.



The Truth of the Matter

And so cracks spread through the foundation of our death-penalty system, a new one opening every time an innocent person walks off of a death row.

NICK YARRIS DOESN'T SLEEP MUCH, MAYBE FOUR hours a night. So many decisions he needs to make seem to pursue him—things like finding a job, getting himself some identification, opening a bank account. It's like being perpetually in the middle of deadlines, waking up and realizing there's so much to do, always. He got a job washing shuttle buses at the airport, but gave it up to focus on what really matters to him: giving speeches, meeting with any politician who will listen, going on any radio or TV show that will have him in order to help the innocent men he left behind. He spent a lot of time around convicted murderers, and his long conversations with two inmates, Walter Ogrod and Ernest Simmons, convinced him that they are innocent. Ogrod was convicted of the sexual assault and murder of a 4-year-old girl, Simmons of the robbery and murder of an 80-year-old woman.

"In order for us to accept the fact that Walter and Ernest are guilty," Yarris says, "we have to accept the fact that they had the ability to transform into cunning, conniving people and then go back into their everyday modes of mentally impaired men. There's just something genuinely, openly, honestly wrong with this."

The Ogrod and Simmons cases have other similarities. Ogrod came within one jury vote of being acquitted at his first trial in 1993, only to be convicted at a second trial in 1996 after a jailhouse informant came forward to testify against him. Simmons' case includes witnesses who testified against him in exchange for deals, another witness who admits now that she was pressured by detectives to identify him, and key physical evidence being withheld from his defense team during his trial.

So, while Yarris hopes to someday quietly publish a book about his experience and then "just fade away," he has, for now, given up his privacy to speak out about the system that almost killed him. In mid-May, after the scandal surrounding the abuse of Iraqi prisoners broke, Yarris had a chance to voice his concerns about the prison system more generally when he was interviewed about one of the U.S. Army reservists charged with abuse, Charles Graner, who had been a prison guard at Greene and had been accused of abuse there long before he ever went to Iraq. Graner's treatment of prisoners at Greene, according to Yarris and other inmates, involved physical abuse and sexual humiliation.

Yarris insists he isn't angry about his time on death row, that being put there was the greatest adventure of his life.

"People don't get that when I say it," he says. "But they don't know the gift I've been given." People tell him he seems to appreciate everyday things more fully than they do, that it rubs off on them: A friend notices the childlike joy Yarris gets from watching little kids play baseball; a lawyer tells him he loves to watch him eat because he'd forgotten how much he loved food.

In his 20s, on death row for something he didn't do, Yarris found a dictionary, a medical encyclopedia from 1936, and three novels. He started educating himself, taught himself German and psychology, became an expert in DNA testing and legal briefs.

So prison gave the damaged kid, the predatory adolescent, a chance to become a good man. It was, Yarris thinks, most likely the only way that that would have happened. "I can't sleep, I'm impatient," Yarris says. "But man, I tell you, every day of my life I'm happy."

Without DNA testing, that redeemed life would have been wrongfully snuffed out. ■

TOM LOWENSTEIN *is a freelance writer based in Boston. He is writing a book about the Walter Ogrod case.*

AP/WIDE WORLD PHOTO

Shutting Down Death Row

Illinois' death-penalty reforms may presage a fairer criminal-justice system.

BY JEAN M. TEMPLETON

CHANGE IN THE CRIMINAL-JUSTICE SYSTEM IS A rare thing. Change in death-penalty policy is even more rare. Yet Illinois undertook a comprehensive reassessment of its death-penalty system recently, passing reforms that will have far-reaching impacts on how murder trials are handled in the state—and that could serve as a model for reform in the rest of the country.

Following the review, 11 men were released from death row, and the furor over the death penalty only escalated after the 1999 release of death-row inmate Anthony Porter. Porter had been convicted of a double murder, believed to be a holdup gone bad, in a Chicago park in 1982. A mere 50 hours before Porter's execution, his lawyers made a last-ditch attempt to save him by asserting new questions about his mental competence. His execution was stayed, and in the intervening months, journalism students working in cooperation with a private detective located another man who confessed to the murder. Porter was released.

The case, and the flood of media attention that accompanied it, was enough to raise doubts about the death-penalty system even among death-penalty supporters, including George Ryan, then the Republican governor of Illinois. In early 2000, Ryan took the bold step of declaring a moratorium on executions in the state until a panel of experts, the Illinois Governor's Commission on Capital Punishment, could make recommendations about how the system might be improved. In 2002, after two years of intensive study, the blue-ribbon commission released a report making 85 recommendations for improving the state's capital-punishment system. Late last year, the Illinois Legislature adopted many of the recommended reforms, and current Governor Rod Blagojevich has pledged to continue the moratorium until the reforms' effectiveness can be assessed.

While both prosecution and defense supported many of the commission's recommendations, there were two that proved controversial. The first required videotaping of police interrogations; the second involved changes in lineup procedures to make eyewitness identifications more reliable. Both recommendations were initially opposed by law enforcement, and it took determined advocacy by legislators before they were included in last year's reforms. Now that they are law, they may produce far-reaching effects on the investigation of homicides in the state.

BECAUSE WE OFTEN BELIEVE THAT OUR EYES DON'T deceive us, we tend to think that eyewitness accounts of a crime are the very best evidence of what actually occurred. Certainly juries often find it persuasive. Unfortunately, as extensive investigation by psychologists has shown, eyewitness evidence may not be especially reliable. The Illinois commission therefore recommended broad changes in the procedures for police lineups.

In a lineup, an eyewitness to or victim of a serious crime views a group of people or photos at the police station. The crime suspect is among the group, and the witness is asked whether he or she can identify anyone in the lineup. Generally speaking, the law requires that the other people in the lineup bear some resemblance to the suspect's description so that the suspect won't stand out. If the witness or victim identifies one of the group, a report is made of the identification.

Research shows, however, that witnesses often choose the person in the lineup who looks most like the person who committed the crime. In other words, they make a *relative judgment*. This process may produce a correct identification if the actual suspect is present. But if he or she is not, many people will simply select the person who most resembles him or her. This selection of the wrong person, what social scientists call a "false positive," can lead to the prosecution of an innocent person.

In an effort to eradicate false positives, Iowa psychologist Gary Wells and others have developed an alternative identification procedure called a "sequential lineup." In this procedure, the eyewitness looks at each person in the lineup separately, without observing the others in the group. The eyewitness then makes more of an *absolute judgment* about that person before observing other people or photos in the lineup. This process reduces the rate of mistaken identifications without substantively reducing the number of accurate identifications.

A majority of the Illinois commission recommended adopting sequential lineups. However, because existing methods had already met with court approval, some commission members had reservations about mandating a procedure radically different from that which was already in placesince . But one legislator with fairly conservative views on the death penalty argued persuasively for the change.

Representative Julie Hamos, a Democrat, represents a relatively liberal district along the north-shore suburbs of Chicago. Early in her legal career, she served as a policy adviser for the Cook County state's attorney's office, the largest prosecutor's office in Illinois. Chicago Mayor Richard Daley, a conservative law-and-order Democrat, was the state's attorney in those days. Hamos herself supported the death penalty for heinous crimes.

Elected to the legislature in 1998, Hamos represents a district that includes many opponents of the death penalty. Troubled by the number of men released from death row in Illinois and affected by activism among her constituents on the issue, she began to modify her own views. Hamos also came to realize the frailties inherent in eyewitness testimony after conversations with Wells.

In 2002, she introduced a bill to require the use of sequential lineups. Prospects for passage seemed dim. But when the "Report of the Governor's Commission on the Death Penalty" was released in April of that year with a similar recommendation, Hamos renewed her efforts, working quietly among the Democratic leadership to ensure that the lineup proposals were on the table.

The measure failed that year, but as the legislature began its journey toward death-penalty reform in 2003, Hamos persuaded the leadership to include it again. In response to law-enforcement concerns, the proposal was limited to development of a pilot program that would enable the procedures to be tested in several police districts in the state. When that legislation passed in November 2003, sequential lineups were part of the bargain. By July 1, 2004, the Illinois State Police was to have identified three pilot police departments, one of which must be the city of Chicago, in which sequential lineups and photo spreads will be tested. A report on the program's effectiveness will be filed with the Illinois General Assembly by September 1, 2005.

Videotaping the process is important because academic studies suggest that there are circumstances under which people will confess falsely. One group known to do so are the mentally retarded, who sometimes confess in order to please authority figures. In 2000, a young Chicago man named Corethian Bell was arrested for killing his mother. Bell, described as mentally ill and borderline retarded, gave a videotaped confession that he had, indeed, killed his mother. Subsequent DNA testing, however, suggested that another man might have been guilty of the crime, and Bell was released from jail and charges against him dropped—despite his confession.

Near-Death Experience: Former Governor George Ryan and death-row survivor Anthony Porter

AP/WIDE WORLD PHOTO

NOT EVERY HOMICIDE CASE INVOLVES EYEWITNESSES, however, which often leaves police the task of interrogating a suspect in order to try to obtain a confession. A person's confession of murder is powerful evidence to prove guilt, and under the law it must have been made voluntarily. Where there is some dispute over whether the statement is voluntary, a defendant may seek to prevent the use of the statement as evidence against him or her.

As the debate over the inadequacies of the Illinois death-penalty system evolved, there were those who charged that some death-row convictions were based on confessions that were not true or not voluntary. Final statements in which a defendant confessed had been videotaped in the Cook County state's attorney's office since 1999. While videotaping these confessions has proven useful to demonstrate what the suspect actually said, critics complained that the program failed to capture the questioning process itself, in which undue pressure may be put on suspects to agree with the police version of events. Reformers in Illinois, including the governor's commission, pushed for the videotaping of the entire interrogation process.

More troubling are confessions coming from those who may have been unduly pressured or abused. In the late 1980s, complaints began to surface that a group of Chicago police officers, led by then–Chicago Police Commander Jon Burge, had brutalized suspects in order to obtain confessions. The allegations went beyond rough treatment during arrest to claims of systematic torture. Suspects alleged that they were beaten, shocked with electrical currents, and threatened with being shot in order to compel confessions. Although Burge denied the charges, he was fired in 1993 for physical brutality against a suspect. None of the police officers alleged to have been involved faced criminal charges. In 2002, almost 10 years later, a special prosecutor was appointed to look into the allegations. Media reports suggest that the number of possible cases of torture has now risen to more than 100. The special prosecutor's report is expected sometime this year.

Proponents of videotaping interrogations point to these incidents to support their case. Videotaping the entire process, they say, would protect suspects from abuses and police officers from unfounded charges of brutality. Yet in Illinois, the proposal failed to gain wide acceptance among

police departments. Officials said it would interfere with police work or that it would be too costly. Bills to implement some form of videotaping of interrogations were introduced in the Illinois Legislature in 1999, but they never got a hearing. The Illinois House revisited the issue in 2001, and it did pass provisions requiring videotaped interrogations, but the bill did not get a hearing in the Illinois Senate. It was not until control of the state Senate changed hands in the 2002 elections that a videotaping bill appeared headed for passage.

Credit for getting the videotaping bill into the final death-penalty package has been largely attributed to state Senator Barack Obama, a Democrat from Chicago. Obama is now running a strong race for the U.S. Senate, which, if successful, would make him the third African American senator since Reconstruction. Elected to the Illinois Legislature in 1996, he is considered an extremely effective legislator. Rather than accept law-enforcement opposition to the bill, he brought law-enforcement officials to the table for discussion, eventually persuading them to drop their opposition.

Illinois thus became the first state in the nation to pass legislation requiring the videotaping of interrogations. The legislation applies to what are called "custodial interrogations"—those occurring at a police station—in all homicide cases. The law works by preventing statements made by a suspect from being admitted in a court proceeding unless the statement was recorded electronically. Under limited circumstances, the prosecution may use unrecorded statements in court if they prove that the statement was voluntarily given and is reliable. The provisions represent a significant change from prior law, which permitted the prosecution to use a statement made by a defendant and put the burden on the defendant to prove that the statement was not given voluntarily. Under the new law, the burden shifts to the prosecution to prove that a statement made outside of an electronic recording process was made voluntarily and is reliable.

Provisions requiring electronic recording do not take effect until 2005 in order to allow time to develop procedures governing the recording. In the meantime, legislation was passed to establish several pilot programs throughout the state to record interrogations in murder cases. These programs will help police agencies develop procedures on how videotaping the interrogation process should occur and provide training for police officers in how to conduct videotaped interrogations.

IN ILLINOIS, THESE INNOVATIVE PROPOSALS—videotaping interrogations and sequential lineups—apply not only to death-penalty cases but to others as well. While officials were initially reluctant to embrace the proposals, their widespread use will ultimately lead to better documentation of evidence and reduce wrongful convictions of all types. In departments where interrogations are videotaped and initial police resistance overcome, we have seen positive benefits, including a sharpening of police interview skills. Over the long term, police will likely come to appreciate these more rigorous investigative techniques.

Improvements in the death-penalty system have gathered increased support among legislators and the public. The reforms in Illinois passed by a nearly unanimous vote of the legislature. And public-opinion polling in February of 2003 suggests a softening of public attitudes on the death penalty in Illinois, with the percentage of state residents who support the death penalty at 55 percent, which is well below national polling figures.

Meanwhile, DNA testing continues to be carried out, leading to the release of innocent men and women—more persuasive proof that our criminal-justice system makes mistakes, which is key in promoting death-penalty reform. The recommendations produced by the governor's commission in Illinois have become a standard by which other states have begun to evaluate their own death-penalty systems. In California, for instance, scholars have recently undertaken a systematic comparison of that state's death-penalty process with the Illinois recommendations and have illuminated many weaknesses.

Recommendations from the governor's commission in Illinois have set the standard by which other states have begun to evaluate their own death-penalty systems.

In North Carolina, advocates of a death-penalty moratorium, modeled on Illinois Governor Ryan's, have gained ground with policy-makers. The North Carolina Senate passed moratorium provisions last year, and advocates are seeking approval in the North Carolina House. Public-opinion polling done by moratorium supporters indicates that 63 percent of those polled favor a moratorium on executions in the state pending a review of the death-penalty system. The North Carolina Academy of Trial Lawyers has released its own list of reforms that should be considered during such a moratorium, including a number of the same substantive reforms suggested in Illinois.

The discussion over reforming the death-penalty system, and the successful passage of so many reforms, has led to a broader evaluation of the criminal-justice system in Illinois and elsewhere. Greater scrutiny of death-penalty cases involving wrongful convictions is slowly leading observers to ask whether there are other miscarriages of justice we have yet to uncover in the rest of the criminal-justice system, where cases are given a far less rigorous review. Death-penalty reforms, then, may be a first step on the road to broader evaluation of the criminal-justice system itself. ■

JEAN M. TEMPLETON *is a Chicago attorney who served as the research director for the Illinois Governor's Commission on Capital Punishment. She is currently completing a doctorate in public-policy analysis.*

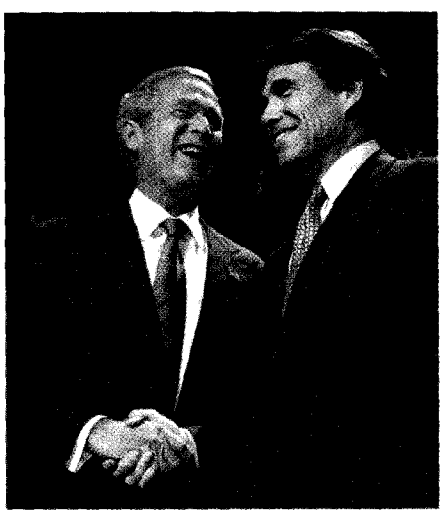
The Unique Brutality of Texas

Why the Lone Star State leads the nation in executions

BY JOSEPH ROSENBLOOM

GATHERING DUST IN TEXAS GOVERNOR RICK Perry's inbox is a clemency petition from Joe Lee Guy, a death-row inmate. The petition declares that "the integrity of Guy's capital trial was severely compromised." Considering how horrendously the wheels of Texas justice turned for Guy, the petition's claim seems, if anything, understated.

In 1994, Guy was sentenced to death for his role, the year before, in the robbery of a grocery store and the murder of its proprietor, Larry Howell. Guy was the unarmed lookout for two other men, Ronald Springer and Thomas Howard. Springer supplied the .22-caliber pistol that Howard used to shoot Howell. Springer and Howard received life sentences.



Partners to the Death: Governors Bush and Perry

Guy's involvement in the crime was never in question, but something went terribly wrong in his legal defense. Frank SoRelle, the investigator hired by the defense, developed a "relationship" with Howell's elderly mother, who was seeking Guy's execution, and SoRelle eventually inherited her $750,000 estate. The work performed by SoRelle and Guy's lawyer was woefully inadequate: The sentencing jury never heard important mitigating evidence, such as the fact that Guy grew up poor and neglected by a gambling-addicted mother, and that he was hampered by extremely limited intelligence.

When the circumstances of Guy's case came to light years after his conviction, it was more than even the Texas Board of Pardons and Paroles could stomach. The board reviews clemency appeals in death-penalty cases and recommends "yes" or "no" to the governor (who may grant clemency only if the board recommends it). The board almost never votes "yes" in a case where a death-row inmate seeks clemency; it's done so just four times since 1990. But in January, the board unanimously urged Perry to commute Guy's sentence to life.

Despite that extraordinary vote, however, Perry is withholding a decision until all federal appeals are exhausted. That Perry is ducking the question speaks volumes about the political climate around the issue of capital punishment in Texas. At a time when many other states have been questioning their death-penalty systems, the Texas political establishment has expressed no such doubts.

Is it any surprise, then, that the state's death-penalty machinery has been steaming right along?

A Democrat turned Republican, Perry was lieutenant governor during the gubernatorial tenure of George W. Bush, and he became governor in January 2001, when Bush took office as president. During Bush's six years in Austin, Texas executed 152 people—a modern-day record for a governor. Since then, 82 more have been put to death—a rate that approaches Bush's. The numbers on Perry's watch would almost certainly have been higher if a Supreme Court ruling two years ago had not prevented the execution of 38 death-row inmates in Texas because of mental-retardation claims.

Why Texas continues to execute people at much the same clip seems rooted not so much in public opinion (polls show that the proportion of Texans favoring capital punishment approximates the national average) as in the state's peculiar political and judicial circumstances. Conservative Republicans have consolidated their power over all the state's main political institutions, including the judiciary. Judges, who are elected in Texas, know that any decision appearing to offer leniency in a capital case could cost them dearly in the next Republican primary.

If capital-defense lawyers are at a disadvantage in many states because of a lack of resources available to them next to what prosecutors have at their disposal, the imbalance is particularly striking in Texas, experts say. Robert O. Dawson, a professor of criminal law at the University of Texas School of Law, decries the "disparity of resources" in capital cases Texas-style. "Why is that? Because it's hard to sell [criminal defense] politically. I think that's a wrongheaded political judgment," Dawson says.

Among the 38 states that have capital punishment, Texas is far and away the modern-day leader in implementing it. Although it has 7.6 percent of the nation's total population, Texas carried out 35 percent of the nation's executions between 1976 and last month—putting to death 321 of 909 condemned prisoners, according to the Death Penalty Information Center in Washington. Virginia was a distant second with 91 executions. And since 2002, the record is still more lopsided, with Texas responsible for 42 percent of the nation's total. As executions have emptied death-row prison cells, moreover, Texas juries have quickly filled them back up.

LARRY DOWNING/REUTERS/LANDOV

The state's death-row population has held steady (in the 450 range) since the late 1990s.

As an executioner of juvenile offenders, Texas also stands out not just in this country but around the globe. Since 1998, the state has put to death eight offenders who were under 18 at the time of their crime—nearly half the worldwide total of 17, according to Amnesty International.

How Texas handles death-penalty cases has attracted international scrutiny of another kind. In March, the International Court of Justice (World Court) held that the United States had violated the rights of Mexican nationals on death row in nine states, including Texas. Of the 52 inmates now covered by the opinion, 15 are in Texas prisons. At the time of the Mexicans' arrests, they were not notified of their right to meet with their government's consular representatives, as the Vienna Convention on Consular Relations requires, the court said. It ordered the United States to remedy the violations of the treaty, which this country signed in 1963, by undertaking an "effective review" of the Mexicans' convictions and sentences.

Hang 'Em High: A legacy of frontier justice

The ruling brought this retort from Governor Perry's spokesman: "Obviously the governor respects the World Court's right to have an opinion, but the fact remains [that the court has] no standing and no jurisdiction in the state of Texas."

There is some logic, however tortured, to Perry's position. Treaties signed by the United States are binding on the states under the federal Constitution, but it is also true that the World Court lacks enforcement power. The United States ignored the court's order in a consular-notification case and allowed Arizona to execute two German brothers in 1999.

By openly defying the court's authority, however, Perry is burnishing his tough-on-crime credentials. That may pay political dividends in Texas, but it leaves him little room to maneuver on consular notification. Perry's chest-thumping contrasts with how Oklahoma Governor Brad Henry, another death-penalty supporter, dealt with one of the Mexicans covered by the court's order. In May, Henry commuted the death sentence of Osbaldo Torres to life without parole.

Perry's death-penalty posture is not at odds with the Republican-dominated Texas Legislature. Strengthened by legislative redistricting, the GOP gained a majority of seats in the House (where Republicans outnumber Democrats 88 to 62) in 2002 for the first time since Reconstruction and tightened its grip on the Senate (where the margin favors Republicans 19 to 12). Now, the Republicans have a lock on the legislature and occupy every statewide office.

In 2003, the last time the legislature met in a regular biennial session, it rejected a bill to establish a consular-notification procedure. Proposals to authorize the governor to impose a moratorium on executions and create a death-penalty study commission were bottled up in committee.

One death-penalty proponent who has gained influence due to the rightward tilt is state Representative Terry Keel. A Republican, ex-sheriff, and former county prosecutor, Keel became chairman of the Criminal Jurisprudence Committee in the Texas House of Representatives last year.

A bill that Keel helped quash would have allowed Texas juries in capital cases to impose, as an alternative to a death sentence, a penalty of life imprisonment without the possibility of parole. Only two of the 38 death-penalty states, Texas and New Mexico, do not offer juries that choice. Keel opposed the measure on the grounds that "incarcerating the most violent of criminals for life, with no hope of parole, places corrections employees in inexcusable danger," as he wrote in a newspaper column, although the point is widely disputed by corrections experts. "The system of justice [in Texas] is sound. I believe we have a high level of integrity," Keel told a newspaper reporter last summer.

WHERE KEEL SEES SOUNDNESS AND INTEGRITY, other observers see deep flaws. One who has an up-close view is Charlie Baird, a former judge on the Texas Court of Criminal Appeals who now sits as a visiting judge in criminal trials and appeals. According to Baird, a critical weakness of the Texas judiciary is the lack of meaningful appellate review. The deliberations of the state appeals court in capital cases are typically "exceedingly poor" and "devoid of any kind of critical legal reasoning," Baird says.

All judges in Texas are elected. Baird was one of the last two Democrats to serve on the criminal appellate court. After eight years on the court, which hears all death-penalty appeals in Texas, he lost his bid for re-election in 1998. The other Democrat retired the same year.

When judges run for re-election, the death penalty is rarely

an issue—unless there is a contest about who is most for it. All nine members of the Texas Court of Criminal Appeals are conservative Republicans, and eight of them are former prosecutors with little or no experience as capital defenders, sources say. The court's rate of affirming death sentences is "probably the highest" of any appellate court in the nation, Baird says. "When I was there, [the court] had such a results-oriented ideology that no matter what issue was raised on appeal, [the judges] were going to affirm the conviction and sentence."

To illustrate what's wrong with the appellate judiciary in Texas, critics point especially to two well-publicized cases that eventually reached the U.S. Supreme Court, *Banks v. Dretzke* and *Miller-El v. Cockrell.* In the first, Delma Banks Jr. was convicted of fatally shooting a 16-year-old boy and stealing his car near the northeast Texas town of Nash. But it turned out that prosecutors had withheld evidence that would have allowed Banks to discredit two key witnesses against him, including the fact that one of them was a paid police informant. The Texas Court of Criminal Appeals found that Banks' appeal had come too late. But in February, the Supreme Court found otherwise—and unanimously granted Banks the right to appeal.

A critical weakness of the Texas judiciary is the lack of meaningful appellate review in death-penalty cases.

In the second case, a jury sentenced Thomas Miller-El to death for the robbery and murder of a Holiday Inn employee. The trial of Miller-El, an African American, was held in a Dallas County court in 1986. Miller-El's lawyer objected that the prosecutors had used racially discriminatory tactics to select the jury, which the lawyer said resulted in 10 of the 11 African Americans eligible to serve on the jury being excluded. The Texas appellate court rebuffed Miller-El's claim. Last year, by an 8-to-1 vote, the Supreme Court sided with the Texas defendant, finding that Miller-El had been denied the right to a fair trial.

Another weakness of Texas justice is the quality of capital-defense representation. "I think at the heart of the problem in Texas is that [capital-defense representation] is underfunded," says Andrea Keilen, deputy director of the Texas Defender Service, a death-penalty research and consulting organization that brings appeals on behalf of some of the state's death-row inmates.

In Texas, judges appoint lawyers on a case-by-case basis from a list of "qualified" counsel. Lawyers' fees vary widely from county to county. The amount provided to defend indigents in capital cases is typically much lower in rural areas. In Fort Bend County, for example, the fees lawyers are paid to try such cases are as low as $200 a day. Investigators earn a maximum of $600 per case, and the total sum for experts is $750.

The maximum available for a habeas-corpus appeal to the Texas Court of Criminal Appeals is $25,000, which must pay lawyers, investigators, and experts. A habeas appeal is time-consuming. It requires the defense team to go beyond the trial record and seek out any possible factor—such as new evidence of a convicted offender's innocence or prosecutorial misconduct during the trial—that might justify further appellate review.

"The competent attorneys are not drawn to the cases because they know they're going to lose money, or they're going to lose the case because they don't have the money to do a proper investigation or something else that's necessary to win the case," says Keilen.

Unlike California and Florida, two other states where capital trials are common (but executions are not), Texas has no statewide public-defender system. There are public-defender offices in Dallas, El Paso, and Wichita Falls, but they handle only a fraction of the death-penalty cases even in their own cities. The lack of a significant public-defender system puts capital defenders—many of whom are solo practitioners—at a disadvantage against the organized corps of death-penalty specialists that are common in prosecutors' offices.

Many lawyers appointed to represent death-row inmates in habeas petitions to the Texas Court of Criminal Appeals are "unqualified, irresponsible or overburdened and do little if any meaningful work for the client," a study by the Texas Defender Service concluded two years ago. One lawyer approved by the court as "qualified," for example, had been disciplined for dereliction of duty to his client. Five qualified lawyers proved ineligible because they already held jobs that created potential conflicts of interest. One lawyer named as qualified was dead.

Although the Joe Lee Guy case was not singled out in the report, its particulars echo these findings. Besides having an ill-trained and self-serving investigator, Guy had the misfortune of being assigned a lawyer, Richard Wardroup, whose record at the State Bar of Texas would show numerous reprimands and suspensions between 1985 and 2000, including sanctions for misrepresenting to a client that he had filed a suit, missing deadlines to seek a new trial and to appeal, failing to act competently as a lawyer, and otherwise neglecting his clients.

What's more, Wardroup's drug and alcohol use was "pervasive" during the period that he was Guy's lawyer, and he "did approximately three to four lines of cocaine" while driving to Guy's trial one morning, says a sworn affidavit of the lawyer's former secretary, Regina Young.

Wardroup was appointed as Guy's appellate lawyer but was suspended from practice while the appeal was pending. The appellate brief filed by a substitute lawyer also "did not address [investigator] SoRelle's actions or his relationship with Mrs. Howell," according to Guy's clemency petition.

SoRelle's bizarre role as Guy's investigator did not come to light until pro bono lawyers from Minneapolis tackled the case in early 2000 and appealed to a federal court. Guy's execution, which Texas had scheduled for June 28 of that year, was stayed by a federal judge just 15 days earlier. The possibility remains that the federal courts, if not Governor Perry, will rectify the injustices in Guy's case. Whether Texas will do the same in the case of its death-penalty system is another question altogether. ■

JOSEPH ROSENBLOOM *is a* Prospect *senior correspondent.*

The Uneven Scales of Capital Justice

How race and class affect who ends up on death row

BY CHRISTINA SWARNS

In 1972, the U.S. Supreme Court declared the death penalty unconstitutional. The Court found that because the capital-punishment laws gave sentencers virtually unbridled discretion in deciding whether or not to impose a death sentence, "The death sentence [was] disproportionately carried out on the poor, the Negro, and the members of unpopular groups."

In 1976, the Court reviewed the revised death-penalty statutes—which are in place today—and concluded that they sufficiently restricted sentencer discretion such that race and class would no longer play a pivotal role in the life-or-death calculus. In the 28 years since the reinstatement of the death penalty, however, it has become apparent that the Court was wrong. Race and class remain critical factors in the decision of who lives and who dies.

Both race and poverty corrupt the administration of the death penalty. Race severely disadvantages the black jurors, black defendants, and black victims within the capital-punishment system. Black defendants are more likely to be executed than white defendants. Those who commit crimes against black victims are punished less severely than those who commit crimes against white victims. And black potential jurors are often denied the opportunity to serve on death-penalty juries. As far as the death penalty is concerned, therefore, blackness is a proxy for worthlessness.

Poverty is a similar—and often additional—handicap. Because the lawyers provided to indigent defendants charged with capital crimes are so uniformly undertrained and undercompensated, the 90 percent of capitally charged defendants who lack the resources to retain a private attorney are virtually guaranteed a death sentence. Together, therefore, race and class function as an elephant on death's side of the sentencing scale.

When and how does race infect the death-penalty system? The fundamental lesson of the Supreme Court's 1972 decision to strike down the death penalty is that discretion, if left unchecked, will be exercised in such a manner that arbitrary and irrelevant factors like race will enter into the sentencing decision. That conclusion remains true today. The points at which discretion is exercised are the gateways through which racial bias continues to enter into the sentencing calculation.

Who has the most unfettered discretion? Chief prosecutors, who are overwhelmingly white, make some of the most critical decisions vis-à-vis the death penalty. Because their decisions go unchecked, prosecutors have arguably the greatest unilateral influence over the administration of the death penalty.

Do prosecutors exercise their discretion along racial lines? Unquestionably yes. Prosecutors bring more defendants of color into the death-penalty system than they do white defendants. For example, a 2000 study by the U.S. Department of Justice reveals that between 1995 and 2000, 72 percent of the cases that the attorney general approved for death-penalty prosecution involved defendants of color. During that time, statistics show that there were relatively equal numbers of black and white homicide perpetrators.

Prosecutors also give more white defendants than black defendants the chance to avoid a death sentence. Specifically, prosecutors enter into plea bargains—deals that allow capitally charged defendants to receive a lesser sentence in exchange for an admission of guilt—with white defendants far more often than they do with defendants of color. Indeed, the Justice Department study found that white defendants were almost twice as likely as black defendants to enter into such plea agreements.

Further, prosecutors assess cases differently depending upon the race of the victim. Thus, the Department of Justice found that between 1995 and 2000, U.S. attorneys were almost twice as likely to seek the death penalty for black defendants accused of killing nonblack victims than for black defendants accused of killing black victims.

And, finally, prosecutors regularly exclude black potential jurors from service in capital cases. For example, a 2003 study of jury selection in Philadelphia capital cases, conducted by the Pennsylvania Supreme Court Commission on Race and Gender Bias in the Justice System, revealed that prosecutors used peremptory challenges—the power to exclude potential jurors for any reason aside from race or gender—to remove 51 percent of black potential jurors while excluding only 26 percent of nonblack potential jurors. Such bias has a long history: From 1963 to 1976, one Texas prosecutor's office instructed its lawyers to exclude all people of color from service on juries by distributing a memo containing the following language: "Do not take Jews, Negroes, Dagos, Mexicans or a member of any minority race on a jury, no matter how rich or how well educated." This extraordinary exercise of discretion harms black capital defendants because statistics reveal that juries containing few or no blacks are more likely to sentence black defendants to death.

Such blatant prosecutorial discretion has significantly contributed to the creation of a system that is visibly permeated with racial bias. Black defendants are sentenced to death and executed at disproportionate rates. For example, in Philadelphia, African American defendants are approximately four times more likely to be sentenced to death than similarly sit-

uated white defendants. And nationwide, crimes against white victims are punished more severely than crimes against black victims. Thus, although 46.7 percent of all homicide victims are black, only 13.9 percent of the victims of executed defendants are black. In some jurisdictions, all of the defendants on death row have white victims; in other jurisdictions, having a white victim exponentially increases a criminal defendant's likelihood of being sentenced to death. It is beyond dispute, therefore, that race remains a central factor in the administration of the death penalty.

SOCIOECONOMIC STATUS ALSO PLAYS AN INAPPROpriate yet extremely influential role in the determination of who receives the death penalty. The vast majority of the people who are sentenced to death and executed in the United States come from a background of poverty. Indeed, as noted by the Supreme Court in 1972, "One searches our chronicles in vain for the execution of any member of the affluent strata of this society. The Leopolds and Loebs are given prison terms, not sentenced to death."

The primary reason for this economic disparity is that the poor are systematically denied access to well-trained and adequately funded lawyers. "Capital defense is now a highly specialized field requiring practitioners to successfully negotiate minefield upon minefield of exacting and arcane death-penalty law," according to the Pennsylvania commission. "Any misstep along the way can literally mean death for the client." It is therefore critical that lawyers appointed to represent poor defendants facing death possess the requisite compensation, training, and skill to mount a meaningful challenge to the government's case.

Bearing a heavy burden

THINKSTOCK/GETTY IMAGES

Unfortunately, few if any of the defendants on death row are provided with lawyers possessing the requisite skills and resources. Instead, poorly trained and underfunded court-appointed lawyers who provide abysmal legal assistance typically represent those death-sentenced prisoners. Tales of the pathetic lawyering provided by appointed counsel to their capitally charged clients are legion. Perhaps the most famous example is that of Calvin Burdine, whose court-appointed lawyer slept through significant portions of his trial. Another example is the case of Vinson Washington, whose court-appointed lawyer suggested to the defense psychiatrist that Vinson "epitomized the banality of evil." Death-sentenced defendants are so frequently provided with poor representation that, in 2001, Supreme Court Justice Ruth Bader Ginsburg commented that she had never seen a death-penalty defendant come before the Supreme Court in search of an eve-of-execution stay "in which the defendant was well-represented at trial."

One reason that appointed counsel perform so poorly is that they are grossly undercompensated. In some cases, capital-defense attorneys have been paid as little as $5 an hour. Not surprisingly, these paltry rates of compensation have yielded an equally paltry quality of representation. As was succinctly noted by the 5th U.S. Circuit Court of Appeals in its review of the quality of representation provided by a court-appointed lawyer to a capitally charged defendant in Texas: "The state paid defense counsel $11.84 per hour. Unfortunately, the justice system got only what it paid for."

Lawyers appointed to handle capital trials also often lack the expertise necessary to appropriately defend capitally charged defendants. Many states fail to provide appointed counsel with the training necessary to handle these complex cases, and many fail to impose minimum qualifications for lawyers handling capital cases. As a result, capital defendants have been represented by lawyers with absolutely no experience in criminal, much less capital, law. Although the American Bar Association has promulgated standards for the representation of indigent defendants charged with capital offenses, and although those guidelines have been endorsed by the Supreme Court, no death-penalty jurisdiction has implemented a system that meets these requirements. Thus, lawyers without meaningful training or expertise in the area of capital punishment continue to represent defendants facing death.

Because race and class continue to play a powerful role in the administration of the death penalty, it is clear that the current system is as broken today as it was in 1972. As the Supreme Court explained at the time, "A law that stated that anyone making more than $50,000 would be exempt from the death penalty would plainly fall, as would a law that in terms said that blacks, those who never went beyond the fifth grade in school, those who made less than $3,000 a year, or those who were unpopular or unstable should be the only people executed. A law which in the overall view reaches that result in practice has no more sanctity than a law which in terms provides the same."

Because the current death-penalty law, while neutral on its face, is applied in such a manner that people of color and the poor are disproportionately condemned to die, the law is legally and morally invalid. ■

CHRISTINA SWARNS *is assistant counsel to the NAACP Legal Defense & Educational Fund Inc.*

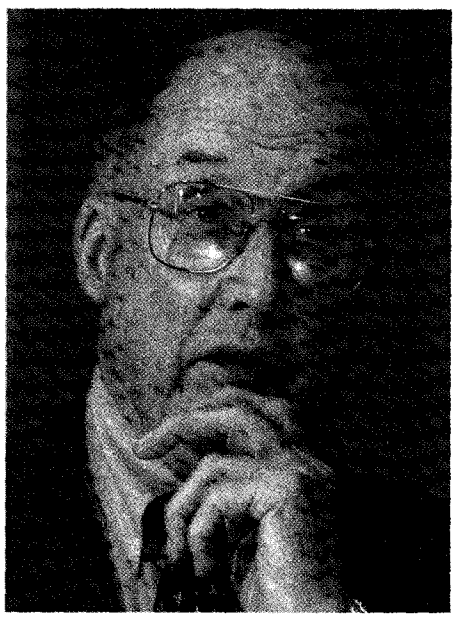
Taking Juveniles Off Death Row

This year the Supreme Court will hear arguments over whether the juvenile death penalty is unconstitutional. If it decides so, the Court will be on the cutting edge of death-penalty reform.

BY SASHA ABRAMSKY

DESPITE A JUDICIARY INCREASINGLY DOMINATED BY CONSERVATIVE APPOINTEES, the federal courts have shown a heartening willingness to rein in the death penalty. In recent years, they have limited who is eligible and have placed other restrictions on states' arbitrary conduct. Two years ago, the U.S. Supreme Court, by a vote of 6 to 3, halted the practice of executing mentally retarded prisoners, declaring it unconstitutional in *Atkins v. Virginia*.

Later this year, the Court will hear arguments in *Roper v. Simmons*, a watershed case involving Christopher Simmons, a young man who had lived on Missouri's death row for close to a decade after being convicted of a particularly gruesome murder committed when he was 17 years old. But in 2003, the Missouri Supreme Court ruled that the juvenile death penalty violated the Eighth Amendment's prohibition on cruel and unusual punishment, and, when the state appealed, the U.S. Supreme Court agreed to take the case. Since then, juvenile executions across the country have been put on hold.



Still Pondering: Chief Justice William Rehnquist

Most experts believe it will be impossible for the Court to avoid a decision barring the execution of juveniles when the justices make their ruling public sometime in 2005. "All the measures are exceeded," says Adam Ortiz, who works on the issue for the American Bar Association. Ortiz is referring to the fact that the same "measures" the Court cited in barring execution of the mentally retarded—an inability to fully interpret events and a lack of complete moral culpability, for example—hold true for juveniles in light of the new scientific understanding of the adolescent brain.

Together, these developments represent the biggest shift away from capital punishment since the practice was briefly abolished in this country between 1972 and 1976. "This is the cutting edge of the death-penalty-reform movement," says Richard Dieter, executive director of the Washington-based Death Penalty Information Center

It is also a remarkable turnaround from the prevailing view on the Supreme Court in the late 1980s. In two seminal cases—*Thompson v. Oklahoma* (1988) and *Stanford v. Kentucky* (1989)—the justices upheld the juvenile death penalty but left open the door to reexamine it if community norms, or "standards of decency," changed in the years to come.

Since then, the standards of decency have indeed changed. A moral consensus is emerging that holds out room for the eventual rehabilitation of teenage criminals, even those convicted of particularly brutal murders, or at the very least one that judges the actions of immature teenagers by a slightly different moral calculator than that used for mature adults; that recognizes new scientific evidence on how the adolescent brain functions; and that seeks to understand, if not excuse, why some adolescents are prone to acts of extreme violence. Perhaps in no other area of the criminal-justice system has there been such a dramatic shift of moral sensibilities in so short a time frame. Importantly, this view is also informed by a troubling body of evidence—gathered by experts like Ohio Northern University law professor Victor Streib—indicating that far from being blind, justice is capricious: Most teenagers sent to death row are poor, black, and likely to have been convicted of killing whites.

BECAUSE OF THE ABOVE FACTORS, AMERICANS INCREASingly favor prison terms, including life without parole, over death for juveniles convicted of capital murder. Last year, only two people in the United States were sent to death row for crimes committed when they were minors, down from seven in 2000. Though the number of Americans executed for crimes committed when they were minors has always been tiny compared to the number of adults executed, the punishment finally "seems to be out of style and

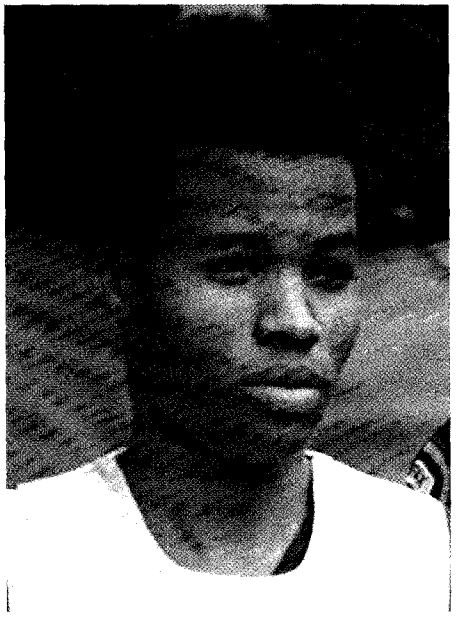
DAVID SCULL/BLOOMBERG NEWS/LANDOV

it seems to be disappearing," says Streib. "It's like an endangered species."

Today, 20 states permit the execution of someone convicted of a crime committed when he or she was younger than 18. Of these, the Death Penalty Information Center estimates that 12 currently have juvenile offenders on death row, all of them in the South except Arizona, Nevada, and Pennsylvania; Texas leads the field with 28 people awaiting execution for crimes committed when they were 17 years old. But a mere seven states have actually carried out such an execution since 1976. Florida, for example, hasn't put a juvenile offender to death since 1954; Arizona since 1934; and Alabama, which has 14 juvenile offenders on its death row and which allows teenagers as young as 16 to be executed, since 1961. In fact, 89 percent of Americans live in states that have not executed a juvenile in more than a decade, reflecting the fact that prosecutors are apparently reluctant to seek the death penalty against juveniles even in states where they can.

Not surprisingly, the majority of the juvenile executions that *have* occurred have been in the single state of Texas (eight out of 13 since 1999), many of them resulting from convictions in the infamous "convict-'em-and-execute-'em" Harris County.

Yet when Texas geared up two years ago to execute Napoleon Beazley, an African American convicted of killing a white man during a botched carjacking in 1994 when the former was 17 years old, 18 state legislators spoke out against the execution, and Judge Cynthia Kent, who had presided over Beazley's trial, wrote a letter to Governor Rick Perry urging him to commute the sentence. Professional organizations such as the American Bar Association and the American Psychiatric Association called for a halt to such killings, pointing out that only four countries worldwide—Congo, Iran, Pakistan, and the United States—acknowledge having executed juveniles in the years since 2000.



Life Without Parole: Lee Boyd Malvo

Ultimately unsuccessful, the campaign gathered steam even after Beazley was put to death by lethal injection. Newspapers across the country and human-rights organizations around the world declared his execution a travesty. An array of Nobel Peace Prize winners—including Jody Williams, Desmond Tutu, F.W. de Klerk, and the Dalai Lama—signed an open letter in Paris urging the United States to end these judicial killings. And back home in Texas, widespread opprobrium moved state senators to vote to ban the juvenile death penalty. The House failed to follow suit only after the governor intervened in support of preserving such executions.

Perry's action, however, did not dampen the national sentiment against the juvenile death penalty. In the years prior to Beazley's execution, Montana and Indiana had passed laws banning juvenile executions. Since Perry's intervention, South Dakota and Wyoming have also barred the punishment. And just before Christmas of last year, defenders of the juvenile death penalty received yet another setback, this time in Virginia. In one of the highest-profile capital-murder cases of recent times, a jury recommended *not* to impose the death penalty on Lee Boyd Malvo, the teenage triggerman in the notorious Washington, D.C., sniper killings. What made the decision all the more improbable was the fact that Attorney General John Ashcroft had gone out of his way to secure a trial in Virginia precisely because Virginia juries were more likely to vote for death in cases where the defendant was a minor at the time the crimes occurred. Weeks earlier, another Virginia jury had elected to sentence adult sniper John Allen Muhammad to death for the killing spree.

The Virginia verdicts appear to reflect a broader view borne out by national opinion polls and studies of jurors in other capital cases: While a majority of Americans continue to support capital punishment for adults, a broad-based consensus is developing against the practice of executing juveniles.

Those few who defend the practice increasingly resort to a language of unilateralism, displaying paranoid hostility to perceived international encroachments on U.S sovereignty. In September 2001, for example, during Beazley's appeals process, the state of Texas filed a response in which it claimed that a move to bar juvenile executions would amount to bowing to "economic extortion from some European council," and that it would represent "social engineering by those who cannot achieve their neo-socialist designs on government through the democratic processes established in our state and federal constitutions."

Other proponents of juvenile capital punishment seem to long for a simpler world easily divided into Manichaean goods and evils. "If they're old enough to serve in the armed forces, they're old enough to be held accountable for capital crimes," says 48-year-old Austin attorney and former Marine William "Rusty" Hubbarth, of the Texas-based Justice For All organization. "If the government feels a 17-year-old is mature enough to be trained to be a professional killer, they're old enough to know the difference between right and wrong." Hubbarth, who opaquely states that his own family was the subject of a violent crime and who used to write case summaries for the Texas Board of Pardons and Paroles during presentations arguing for clemency for death-row inmates, adds, "Some of these people don't deserve to be breathing the same air as me."

Yet more and more, voices like Hubbarth's are the mi-

BRENDAN MCDERMID/REUTERS/LANDOV

nority. Recent research by criminologists from Northeastern University's Capital Jury Project and the University of Delaware found that barely 18 percent of juries recommended the death penalty when a capital defendant was younger than 18 at the time of his or her crime. When the defendant was 18, only 34 percent of juries imposed a death sentence. But when a defendant was older than 18, between 55 percent and 65 percent of juries handed down death sentences. Reflecting a similar sensibility, a 2001 Texas poll found that only 34 percent of Lone Star State residents supported the juvenile death penalty, despite Texas' status as the nation's execution epicenter. And in 2002, a national Gallup Poll estimated that barely a quarter of all Americans favored the penalty for minors.

TO BE SURE, STRONG PUBLIC UNEASE WITH THE JUVENILE death penalty has to do with a cultural reluctance to sanction the killing of children that has operated throughout American history. But more recent shifts in public opinion may be informed by advances in brain-imaging techniques and scientists' understanding of how the adolescent brain works.

In the 1960s, Harvard neurologist Paul Ivan Yakovlev began using a new staining technique on a collection of more than 1,500 brains from deceased people of various ages. His aim was to study how the brain continues to acquire fatty insulation, or myelin, as it ages through childhood and adolescence. The insulation facilitates the brain's ability to transmit information; to understand the past, present, and future; and to interpret its surroundings. Absent such insulation, the brain is restricted in how well it can interpret complex data and self-censor basic impulses—including violent ones. Yakovlev's findings, contradicting earlier theories, indicated that brain structures continue to evolve well beyond childhood.

"We used to think brain development was complete by 3 or 4 years old," explains David Fassler, trustee-at-large of the American Psychiatric Association and clinical professor of psychiatry at the University of Vermont. "We now know it continues through adolescence, and, in some areas, even into early adulthood."

With more recent advances in magnetic resonance imaging, brain scans on living subjects have become far more sophisticated, allowing neuroscientists to develop detailed maps of how the brain changes over time, which parts of the brain change first, and which parts mature only in early adulthood.

"Until you are 18, the brain is changing," explains Ruben Gur, a neuropsychologist at the University of Pennsylvania Medical School. "And those parts of the brain that come on board last, that myelinate last, are exactly those parts of the brain that do the functions considered to be related to criminal culpability. The last parts of the brain to become myelinated are the frontal lobes and cortexes—the thinking parts of the brain."

For the vast majority of children, a good social network, parental advice, and the presence of teachers, mentors, and minders serve as a sort of societal substitute for the functions of the fully developed frontal cortex. In some children, however, that substitute is so absent or twisted—through neglect or abuse—that the child has no inhibitors to extreme acts of violence. Overwhelmingly, say neuropsychologists, these are the young people who are most at risk of ending up on death row. That doesn't mean that such children shouldn't be punished—and, when necessary, incarcerated for long periods—in order to protect society from their violent actions. What it does mean, however, is that complicating factors may exist that should be given serious weight during the sentencing phase of any capital case involving a juvenile.

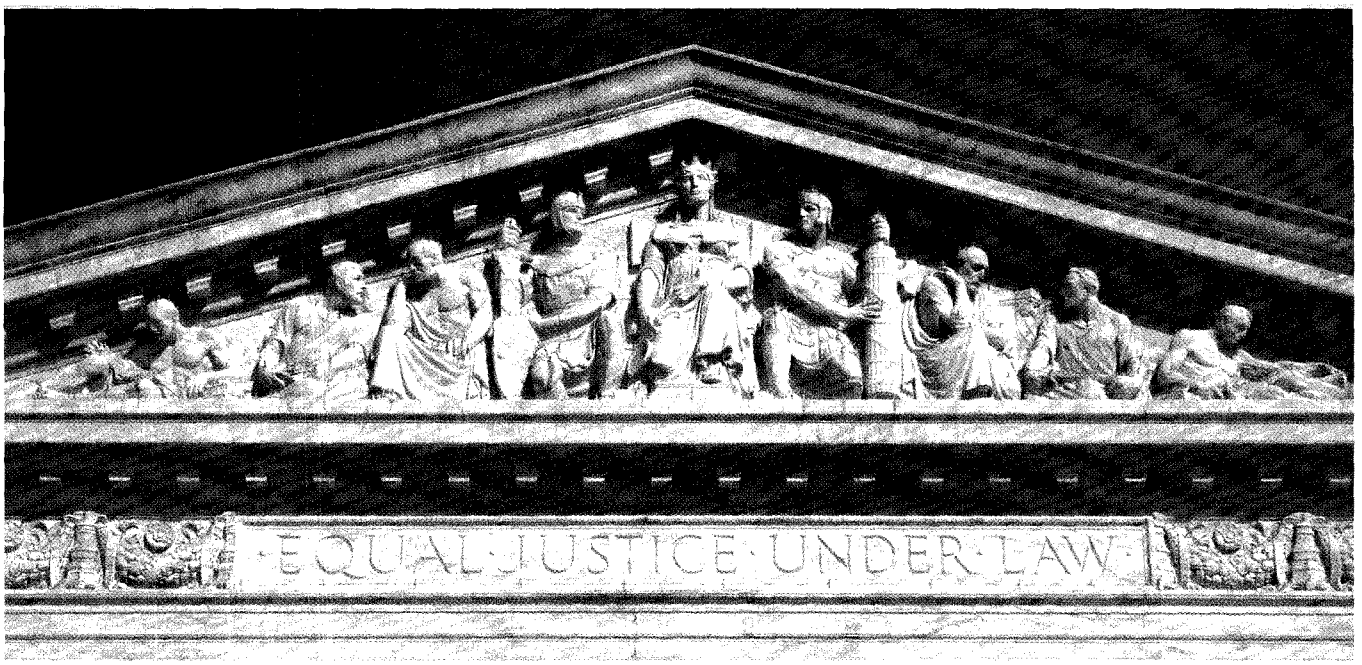
WHETHER BECAUSE OF NEW SCIENTIFIC UNDERstandings or because of a greater communal sensitivity to the challenges faced by abused, disturbed young people, someday soon the juvenile death penalty may be a sorrowful anachronism, as antithetical to American values of fairness and justice as the burning of witches seems today.

A cultural reluctance to sanction the killing of children and new research on how the adolescent brain works underlie public unease with the juvenile death penalty.

Hours before Napoleon Beazley died in Texas' execution chamber, he released his final statement. "The act I committed to put me here was not just heinous, it was senseless," the condemned man wrote, his appeals all used up, his time on earth galloping away. "But the person that committed that act is no longer here—I am. I'm not going to struggle physically against any restraints. I'm not going to shout, use profanity or make idle threats. Understand though that I'm not only upset, but I'm saddened by what is happening here tonight. I'm not only saddened, but disappointed that a system that is supposed to protect and uphold what is just and right can be so much like me when I made the same shameful mistake."

When it comes to the death penalty, America has shown a peculiar propensity over the years for perpetuating the "shameful mistake." When the Supreme Court hands down its ruling in the *Simmons* case, hopefully at least one avenue for such mistakes will be permanently closed down. And once people see that justice can still be served without executing young criminals, perhaps they will be more inclined to believe that the justice system would still function were the death penalty as a whole consigned to history. ■

SASHA ABRAMSKY *is a freelance journalist and the author of* Hard Time Blues: How Politics Built a Prison Nation.



HISHAM F. IBRAHIM/GETTY IMAGES

Courtroom Contortions

How America's application of the death penalty erodes the principle of equal justice under law.

BY ANTHONY G. AMSTERDAM

ONE COST THIS COUNTRY PAYS FOR THE DEATH penalty is that its courts are constantly compelled to corrupt the law in order to uphold death sentences. That corruption soils the character of the United States as a nation dedicated to equal justice under law.

This is not the only price we pay for being one of the very few democracies in the world that retains capital punishment in the 21st century. But it is a significant item on the cost side of the cost-benefit ledger, something that each thinking person ought to balance in deciding whether he or she supports capital punishment. And it warrants discussion because this cost is little understood. I have spent much of my time for the past 40 years representing death-sentenced inmates in appeals at every level of the state and federal judicial systems, and I am only lately coming to realize how large a tax the death penalty imposes on the quality of justice in those systems.

The western face of the U.S. Supreme Court building bears the motto "Equal Justice Under Law." Court opinions frequently quote this motto to summarize the basic commitments of our constitutional democracy. The death penalty erodes all three commitments—to equality, to justice, and to the rule of law.

In the first place, death sentences are handed out in a way that belies our pretensions of evenhandedness, fairness, and legal regularity. Whether a person convicted of murder will end up sentenced to death or to prison depends upon a series of discretionary decisions by the prosecutor in each case—what crime to charge, whether to engage in plea bargaining (and on what terms), whether to seek a death sentence—and another discretionary decision by the sentencing judge or jury.

These decisions are individually erratic and collectively haphazard, producing one or two death sentences and a dozen or two dozen lesser sentences out of every group of cases that is factually, legally, and rationally indistinguishable as regards the nature and circumstances of the crime and the character and record of the defendant. For example, there are currently 72 young people in 12 states awaiting execution for murders committed when they were under 18 years old. Yet a Virginia jury sentenced Lee Boyd Malvo, one of the Washington-area snipers, to life, not death, and the overwhelming majority of juveniles who—like the 72 now on death row—have committed crimes less egregious than Malvo's are not sentenced to die.

Next, as legal appeals proceed, a mirror-image kind of inequality develops. For every condemned defendant whose death sentence is set aside by a reviewing court on the ground of some trial error or constitutional violation, there are a dozen or more defendants who do *not* get their death

sentences set aside despite indistinguishable trial errors or constitutional violations in their cases. Courts supposedly applying general legal rules turn out decisions that are almost as unpredictable and inexplicable as the decisions of prosecutors and sentencing juries making ad hoc, case-specific judgments.

For example, in 2000 and 2003, the U.S. Supreme Court vacated the death sentences of Terry Williams in Virginia and Kevin Wiggins in Maryland after finding that the lawyers for these men had performed so incompetently at their sentencing trials that Williams and Wiggins were denied the "assistance of counsel" required by the Sixth Amendment. There is no doubt that the lawyers' performances were abysmal in both of these cases. But every practiced capital-defense attorney or prosecutor I know was amazed by the Court's *Williams* and *Wiggins* decisions, because all of us have seen case after case in which defendants received *worse* representation than these two men did and yet had their Sixth Amendment claims rejected by the lower courts and their requests for review summarily denied by the Supreme Court.

Death sentences are meted out not only erratically but also discriminatorily, on the basis of race. Exhaustive studies done in connection with the *McCleskey v. Kemp* case that other lawyers and I took to the Supreme Court in 1986 demonstrated this deeply troubling pattern. In Georgia murder prosecutions between 1973 and 1979, 22 percent of black defendants who killed white victims were sentenced to death; 8 percent of white defendants who killed white victims were sentenced to death; 1 percent of black defendants who killed black victims were sentenced to death; and 3 percent of white defendants who killed black victims were sentenced to death. (Only 64 of the 2,500 homicide cases studied involved killings of blacks by whites, so the 3-percent figure represents two death sentences over a six-year period. The reason why bias against black defendants was not even more apparent was that most black defendants convicted of murder have killed black victims; almost no convictions are found of white defendants who have killed black victims; and virtually no defendant convicted of killing a black victim gets the death penalty.)

No factor other than race explained these patterns. The studies analyzed hundreds of factors relating to the crime, to the victim, and to the defendant in each case. The analysis with the greatest explanatory power showed that after controlling for nonracial factors, murderers of white victims received a death sentence 4.3 times more frequently than murderers of black victims. The race of the victim was as good a predictor of a capital sentence as the aggravating factors spelled out for jury consideration in the Georgia statute, like whether the defendant had a prior murder conviction or was the primary actor in the present murder. (Only 5 percent of Georgia killings resulted in a death sentence, yet, when more than 230 nonracial variables were controlled for, the death-sentencing rate was 6 percent higher in white-victim cases than in black-victim cases. In other words, a murderer incurred less risk of death by committing the murder in the first place than by selecting a white victim instead of a black one.) Newer studies in other states have consistently shown the same racially discriminatory pattern of capital sentencing.

More appalling than these statistics was the Supreme Court's reaction to them. In an opinion by Justice Lewis Powell Jr., a 5-to-4 majority conceded that the data before the Court "indicated a risk that racial considerations enter into capital sentencing determinations," but held that the courts have no constitutional power to remedy this situation. Justice Powell's *McCleskey* opinion offered a series of elaborate reasons for its conclusions, but the bottom line was that if the courts undertook to review claims of race discrimination in capital sentencing, they would also be obliged to review claims of discrimination by other subgroups disfavored in the capital-sentencing lottery, and the death penalty would be rendered unenforceable as a practical matter.

The courts keep twisting ordinary rules of law in order to uphold death sentences and executions that would otherwise fail to pass legal muster.

Four years later, after his retirement from the Court, Powell told his biographer that he'd changed his mind and would have changed his vote in *McCleskey* if he could. He had become convinced that capital punishment cannot be administered with the fairness and consistency necessary to satisfy the Constitution. Nevertheless, the Supreme Court has refused to reconsider its 1987 ruling.

To be sure, the Court does sometimes reverse itself on death-penalty issues. But these "corrections" expose additional problems with the penalty. Consider the 2002 decision in *Ring v. Arizona*.

The question in *Ring* was whether a convicted defendant could be made eligible for a death sentence on the basis of facts found by a judge rather than a jury. The question arose because in Arizona (and six other states), after a jury convicted a defendant of first-degree murder, additional aggravating circumstances had to be found in order to support a death sentence, and these findings were made by the trial judge (or a three-judge panel), *not* by the jury. In 1990, this Arizona procedure had been upheld by the Supreme Court against the argument that it violated the right to jury trial guaranteed by the Constitution. But in 2000, the Court had held, in a hate-crime case, that the constitutional right to jury trial was violated by a procedure that allowed a defendant convicted of a noncapital crime to be sentenced to a longer term of imprisonment than the maximum prescribed for that crime if a judge, without a jury, found that the crime was aggravated by being racially motivated.

In the *Ring* case, lawyers for a condemned inmate argued that Arizona's capital-sentencing procedure involved the same constitutional defect that the Court had found in the 2000 hate-crime case. The Supreme Court agreed, overruled its dozen-year-old decision upholding the Arizona procedure, and declared the procedure unconstitutional.

The same arguments that were made to the Court and accepted by it in the 2002 *Ring* case and in the 2000 hate-crime case had been made to the Court and rejected by it in its 1990 Arizona decision and also in a 1984 Florida case challenging an analogous judge-sentencing procedure. Those arguments were based on what the Framers of the Constitution, in light of preceding centuries of English history, must have meant the constitutional right of jury trial to include. Nothing relevant or rational made those arguments any more convincing legally in 2000 or 2002 than in 1984 or 1990. The Supreme Court simply woke up to the arguments 10 years too late to save the 22 men who were put to death in Arizona between 1990 and 2002 under a procedure that the Court belatedly discovered was unconstitutional. And constitutional-law experts predict that, in a decision expected in the next few weeks, the Supreme Court will declare that the *Ring* decision is not "retroactive" and therefore does not invalidate the death sentences of 87 additional persons who are now on Arizona's death row under the sentencing procedure invalidated in *Ring*. The 87 could then be put to death even after the *Ring* decision—though their death sentences were imposed by a process *Ring* held incompatible with the Constitution.

All this may well cause you to question the evenhandedness and fairness of the death penalty as it is used in this country today. But what about its legality? Aren't the practices and consequences I've described strictly lawful, however dubious from the standpoints of equality and justice? That depends on whether you believe that it is legally proper for courts to twist the ordinary rules of law in order to uphold death sentences and authorize executions that the rules would not tolerate without twisting.

Remember the 1987 *McCleskey* case, in which the Supreme Court was faced with the question of whether courts should review claims of race discrimination in capital sentencing based on solid statistical evidence. The Court held that they should not, although it admitted that its precedents required courts to hear claims of race discrimination in jury selection and in governmental- and private-employment practices, based on the same kind of statistical evidence. The Court's reason for this result came close to a frank admission that the administration of capital punishment would grind to a halt if courts took seriously the challenge of ensuring that death sentences are not the products of racial bias.

Similarly, in a 1986 case, the Supreme Court was confronted with evidence that the universal practice of "death-qualifying" capital juries—that is, of excluding from jury service any juror who is conscientiously unable to consider voting for a death sentence—had the effect of making capital juries more prone to convict and less willing to give defendants the benefit of the doubt on the issue of guilt or innocence. The Court held that even if this was so, capital defendants are not entitled to have the issue of their guilt decided by a jury that is neutral and impartial according to the standard of the ordinary juries that try all other kinds of criminal cases. It reasoned that because the state is entitled to punish convicted murderers with death, it must be entitled to select juries that will impose a death sentence—and if the only way to get such juries is to compromise ordinary standards of impartiality, so be it. The Court rejected the suggestion that the state's interest in obtaining death sentences could be served by impaneling a death-qualified jury to determine sentence, *after* a conviction, either by forming a new jury or by substituting alternate jurors from the guilt-phase trial for any jurors who could not consider voting for death. The Court said that states employing the death penalty can reasonably conclude that such procedures are too burdensome or inefficient.

The lesson of these Supreme Court decisions is unmistakable. If ordinary judicial scrutiny of apparent patterns of race discrimination cannot be conducted without hampering the states' efficient pursuit of death sentences, judicial scrutiny will be forsworn. If ordinary standards of fairness for criminal-trial juries cannot be maintained without hampering the states' efficient pursuit of death sentences, those standards will be forsworn and juries uncommonly prone to convict will be permitted to do so. When the ordinary fabric of constitutional law needs to be twisted to make the death penalty enforceable, the necessary twists will be made.

This lesson helps us understand the *Ring* case. Why did the Supreme Court suddenly discover in 2000 and 2002 a centuries-old right to jury trial that had escaped its notice in 1984 and 1990? Because in 1984 and 1990, that right was being claimed on behalf of death-sentenced inmates, and its recognition would have stopped their executions. In this context, the Court brushed aside the claim as unworthy of serious consideration. In 2000, the same claim was made on behalf of a convicted noncapital felon challenging an increase in the length of his prison sentence based on a judge-made finding that the crime was motivated by racial bigotry. Here the Court gave the claim serious consideration and upheld it. Then, in 2002, the logical impossibility of distinguishing a death sentence that depended solely upon judge-made findings of fact from a prison sentence that depended solely upon judge-made findings of fact shamed the Court into recognizing that its earlier decisions had been—quite literally—dead wrong.

So, were the 22 prisoners who were executed in Arizona alone under the Court's dead-wrong decision upholding the Arizona capital-sentencing scheme in 1990 lawfully put to death? Or the 87 prisoners whom the Court has held can still be executed after it admitted that its 1990 decision was wrong? Not, I believe, if you take lawful to mean what it surely pretends to mean as engraved on the Supreme Court's facade in the phrase "Equal Justice Under Law." ■

ANTHONY G. AMSTERDAM *is a University Professor and professor of law at New York University.*

Going It Alone

The rest of the civilized world has abolished the death penalty. Will the United States follow suit?

BY CONNIE DE LA VEGA

AS YOU HAVE READ IN THE PRECEDING PAGES, a large majority of countries in the world have abolished the death penalty. In order to join the European Union, for example, countries have to become parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and specifically to Protocol 6, which explicitly abolishes the death penalty. Thus, capital punishment has been eradicated in all of western Europe and most of eastern and central Europe. Most of the countries of the Americas have also abolished the death penalty. Indeed, it was repealed in South Africa after the end of apartheid, where it clearly had been one of the tools of repression used by whites against the black majority. (Countries still using the death penalty include China, Japan, and many Muslim nations.)

The United States, therefore, finds itself at odds on this issue with its European counterparts, with its neighbors in the Americas, and with nearly all democracies—a great many of the countries it has traditionally allied itself with on addressing human-rights problems globally. This failure to follow the trend toward abolition has begun to affect America's influence in the international arena.

Nowhere is this clearer than with respect to the execution of persons who committed their crimes when they were under the age of 18. The United States is arguably the sole violator of the international prohibition of such executions. Numerous treaties and pronouncements by international bodies denounce the practice. Of the six countries besides the United States where juveniles have been executed since 1990—Congo, Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen—the laws recently have been changed or the governments have denied that executions continue to take place. Amnesty International reported that a juvenile offender was executed in China in 2003, but allegedly there had been problems verifying his age. China raised its death-penalty eligibility age to 18 in 1997. And in Iran, the parliament passed a bill in December of 2003 removing the provisions for executions of juveniles. If Iran's Guardian Council ratifies the measure, as many predict, the United States will achieve a highly dubious distinction as the world's only country to openly execute juvenile offenders.

That fact continues to embarrass the United States at the international level. It was one of half a dozen countries specifically named as a violator in a resolution passed in 1999 by the United Nations Sub-Commission on Promotion and Protection of Human Rights. The United States was singled out as the country that accounted for 10 of the 19 juvenile executions occurring in the preceding 10 years. It may be the only time that this nation was mentioned in *any* human-rights resolution by a body of the United Nations. Perhaps still more embarrassing was an attempt last year by the United States to delete language condemning the execution of juvenile offenders from a resolution on the Rights of the Child supported by the UN Commission on Human Rights. The effort to strip the language failed by a vote of 51-to-1 (with the United States the lone dissenter), and prompted sharp criticism from several commission members, among them close U.S. allies in Europe and Latin America.

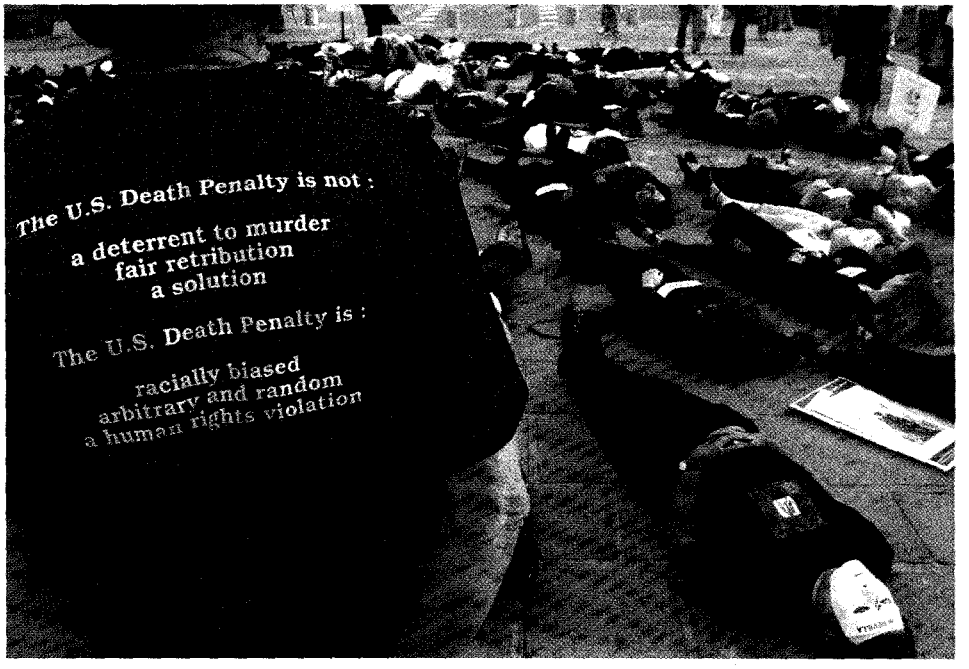
OTHER EVENTS SUGGEST THAT THE UNITED STATES will increasingly be called to task for its own failure to implement human-rights norms, especially in relation to the death penalty. In 2001, the United States was voted off the Commission on Human Rights for the first time in that body's 54-year history. That action may be blamed on many factors, but America's record on the death penalty was at least one point of contention among the nations that failed to support America's renewal.

Similarly, our nation's embrace of the death penalty has jeopardized our status at the Council of Europe, a political organization representing 45 nations across the European continent. In 2001, the council's parliamentary assembly passed a resolution requiring Japan and the United States to impose an immediate moratorium on executions and to take steps to abolish the death penalty in order to maintain their nonvoting observer status. In 2003, the Inter-American Commission on Human Rights, the main human-rights body of the Organization of American States, rejected the sole U.S. candidate for membership, leaving the United States without a seat on the seven-member commission for the first time since it was created in 1959. That vote, too, has been blamed on a number of factors, but it surely hasn't helped that the United States had several commission decisions issued against it with respect to the juvenile death penalty, and has refused to take any steps to implement them.

International adjudicatory bodies are increasingly rendering decisions against the United States with regard to other violations of international treaties and standards related to the death penalty. Most recently, the International Court of Justice (ICJ) has issued opinions that the United States is bound by the provisions of the Vienna Convention on Consular Relations in cases brought against the United States by several of its allies. That treaty provides that persons arrested in a foreign country are supposed to be notified about their right to contact their consulate for assistance. In the wake of repeated violations of the treaty by a number

of U.S. states, Paraguay, Germany, and Mexico brought claims against the United States on behalf of their nationals on death row here. The order by the ICJ in the case brought by Mexico affects more than 50 Mexican citizens, 31 of whom are on California's death row at San Quentin.

Prior to the ICJ case, the Inter-American Court on Human Rights had issued an advisory opinion regarding the application of the Vienna Convention to death-penalty cases. Interestingly, the first court to address the ICJ opinion regarding the condemned Mexican nationals was the Oklahoma Court of Criminal Appeals, that state's highest court for criminal matters. Basing its ruling on the ICJ opinion, the appeals court in May ordered a new hearing for Osbaldo Torres, a Mexican convicted of the 1993 murder of an Oklahoma couple during a burglary of their home. Within a few hours of the ruling, the governor commuted Torres' sentence to life without parole, referring to the United States' obligations under the Vienna Convention and the fact that the State Department had urged him to consider that commitment. As this case demonstrates, the federal government does—and must—play a role in urging the states to comply with U.S. treaty obligations.



Divided Over Death: Capital punishment opponents at a Paris "Die-In," 2003

JOHN SCHULTS/REUTERS/LANDOV

INDIVIDUALS CHARGED WITH capital crimes have also been using international forums to fight their extraditions to the United States. In one case, a young German national named Jens Soering was accused of murdering his girlfriend's parents in Virginia. After he was arrested in England, the U.S. government requested his extradition to stand trial for the killings, for which he faced the possibility of the death penalty. The European Court of Human Rights ruled that prolonged detention on death row violates the prohibition against inhuman and degrading treatment, and that the United Kingdom would violate the European Convention if it extradited Soering to Virginia because he would suffer from what it termed the "death-row phenomenon." Eventually, Soering *was* extradited—but only after Virginia agreed not to seek capital punishment in his case.

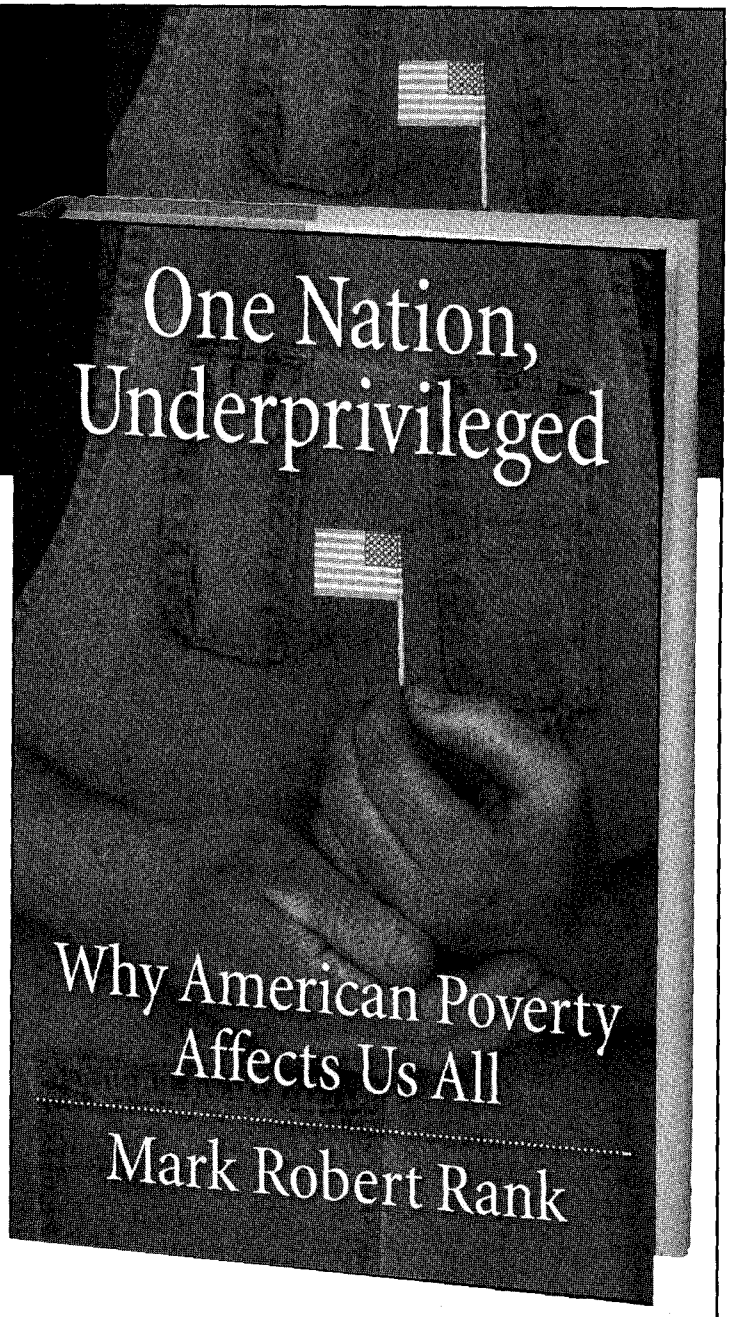
To date, the U.S. Supreme Court has refused to grant certiorari in other cases that have invoked the death-row phenomenon—shorthand for the mental anguish that persons awaiting execution suffer from—despite the various international bodies that have ruled it to be a human-rights violation. Perhaps it is cause for some optimism, at least, that Justices John Paul Stevens and Stephen Breyer, in the more recent case of Texas death-row inmate Clarence Lackey, wrote that state and federal courts should study whether long execution delays could constitute "cruel and unusual punishment" in violation of the Eighth Amendment.

In another extradition case, Charles Chitat Ng, a former U.S. Marine wanted for a string of grisly murders in California, fought his extradition from Canada on the grounds that he faced execution by asphyxiation—a punishment, he argued, that would violate his rights under the International Covenant on Civil and Political Rights (ICCPR). He filed a complaint against Canada before the Human Rights Committee, the body that oversees enforcement of the ICCPR. The committee found that execution by gas asphyxiation would indeed result in prolonged suffering, constituting cruel and inhuman treatment in violation of the ICCPR, and that Canada had violated the treaty by permitting Ng's extradition. (The 9th U.S. Circuit Court of Appeals subsequently upheld a lower court's ruling that execution by gas asphyxiation violates the Eighth Amendment.) Since that decision, Canada has developed its own jurisprudence on this topic. Along with the European countries, it now also refuses to extradite persons who may be subject to the death penalty in the United States following an opinion by its supreme court based on its own constitutional guarantees of the right to life and liberty.

As these examples illustrate, other countries seem increasingly willing to find ways to pressure the United States with respect to its continued use of the death penalty. Moreover, America's efforts to combat terrorism will be made more difficult because friendly countries will not extradite suspects if they face the death penalty. Together, they point to an inescapable conclusion: If the United States wants to regain its role as promoter and protector of human rights around the world, it first needs to address its own violations of internationally recognized standards. ■

CONNIE DE LA VEGA *is a professor at the University of San Francisco School of Law.*

New book reveals that most Americans will experience poverty at some point in their life...and shows us why we should care.



ONE NATION, UNDERPRIVILEGED
Why American Poverty Affects Us All
Mark Robert Rank, *Washington University in St. Louis*

"If you routinely accept America continuing to build more and more prison space but want to debate building more schools—don't read this book. If you feel good about the "Welfare to Work" law even though 25% of all workers in Iowa make poverty level wages—don't read this book. Mark Rank's *One Nation, Underprivileged* is for all the rest of us who believe **poverty is a weapon of mass destruction** and that we should all work to change the course this country is barreling down."

—Honorable Patricia Scott Schroeder, President & CEO Association of American Publishers, Former Member of the U.S. House of Representatives from Colorado

"*One Nation, Underprivileged* attacks the problem [of poverty] with **new and often surprising research, strong moral values, an ear for real people's voices, and a powerful sense of optimism.** Mark Rank reveals how we all share the economic, social, personal, and moral costs of economic insecurity in America and shows why and how we can fight back."

—Marian Wright Edelman, President, Children's Defense Fund

"...An analytical yet passionate critique of the harsh economic reality of poverty, which will affect most of us during our lives..."

—Z Magazine

Mark Robert Rank vividly shows that the fundamental causes of poverty are to be found in our economic structure and political policy failures, rather than individual shortcomings or attitudes. He establishes for the first time that a significant percentage of Americans will experience poverty during their adult lifetimes, and firmly demonstrates that poverty is an issue of vital national concern.

Ultimately, Rank provides us with a new paradigm for understanding poverty, and outlines an innovative set of strategies that will reduce American poverty. *One Nation, Underprivileged* represents a profound starting point for rekindling a national focus upon America's most vexing social and economic problem.

May 2004 368 pp.; 3 line illus.
0-19-510168-5 cloth $29.95

To order any book by credit card, call toll-free 1-800-451-7556.
Please visit our web site at: http://www.oup.com/us

OXFORD
UNIVERSITY PRESS

Four Angry Men: (*left to right*) Tucker Carlson, David Brooks, David Frum, and William Kristol

Look Who's Feuding

Suddenly it's Republicans (for a change!) who are at one another's throats over Iraq. There's even talk of a postelection neocon purge. The sun sets on national greatness conservatism.

BY DANNY POSTEL

ABU GHRAIB. L'AFFAIRE CHALABI. GEORGE TENET'S RESIGnation. More conservative defections from the war enterprise. A circular firing squad of feuds—between John McCain and Denny Hastert, Dick Armey and Tom DeLay.

These have been, to state the obvious, a rough couple of months for the Republicans. Talk of the administration's "wheels coming off" abounds. Consider these recent developments:

• In light of the "house of horrors" at Abu Ghraib, neocon stalwart Max Boot calls for Defense Secretary Donald Rumsfeld to step down. The secretary's "failure to offer his resignation over the Abu Ghraib scandal is sadly typical of the lack of accountability that permeates the U.S. government," Boot thunders in the *Los Angeles Times*.

• The editors of the *National Review,* a bedrock of support for the war from day one, call for "An End to Illusion" and urge their readers to "downplay expectations" in Iraq. "The administration," they editorialize, "clearly wasn't ready for the magnitude of the task that rebuilding and occupying Iraq would present."

• *Crossfire* host Tucker Carlson joins the ever-expanding conservatives-who-have-changed-their-minds-on-Iraq club. "I think it's a total nightmare and disaster," he tells *The New York Observer*, "and I'm ashamed that I went against my own instincts in supporting it. It's something I'll never do again. Never. I got convinced by a friend of mine who's smarter than I am, and I shouldn't have done that. No. I want things to work out, but I'm enraged by it, actually."

• One vice chairman at the American Conservative Union, Donald Devine, declines to shake hands with the president and does not applaud during George W. Bush's keynote address to the group. A Zogby poll shows that Devine is hardly alone, with one out of five Republicans not committed to voting for Bush, which conservative columnist Robert Novak says "could spell defeat in a closely contested election."

• In response to the rolling thunder of right-wing disaffection with the war, William Kristol tells *The New York Times* that the neoconservatives have "as much or more in common with the liberal hawks than with traditional conservatives." He fulminates, "If we have to make common cause with the more hawkish liberals and fight the conservatives, that is fine with me ... ."

And that's just what's been reported in the press. Republican anxieties and grumblings go considerably deeper.

In the May issue of *The American Prospect*, I discussed the emerging alliance of conservatives—realists, libertarians, and paleocons—opposed to the Iraq War and to the expanding American empire [see "Realistpolitik," page 11]. But conservative estrangement from the administration has now spread well beyond that circle, into the ranks of Republicans who supported the war but have either changed their minds or grown increasingly weary of the occupation—and who are concerned that it could cost Bush the election.

In the past few weeks, I've spoken with a myriad of conservative intellectuals, strategists, and insiders about the widening schism in the GOP and its implications for November and beyond. Much of what they told me was off the record or on background—not surprising, given the explosive and recriminatory thrust of the conversations. And given the stakes: A gathering storm now threatens to rupture the conservative coalition that came together around Ronald Reagan and has held firm for almost two generations. The

L TO R: © CORBIS; © PBS; GETTY IMAGES (2)

already fragile mosaic of free-marketeers, religious and cultural conservatives, foreign-policy establishment types, and neoconservatives (think Milton Friedman, Pat Robertson, Brent Scowcroft, and Paul Wolfowitz) has been rattled to its core by the Iraq War. Indeed, many conservatives are contemplating seismic shifts in their coalition's architecture—whether Bush wins in November or loses.

THE MORNING AFTER

Consider the following (not at all implausible) scenario. Bush loses the election. Polls show that Iraq was the decisive issue for swing voters, who were the determining factor in the outcome. In going over the film, as it were, Republican strategists and party operatives meditate on what went wrong. They—especially the ones who went along with the war but were never really gung ho about it—ask, whose idea was this thing, anyway?

The war, one Republican strategist stressed to me, was "a completely inside-the-Beltway deal. ... There was *no* grassroots pressure to go into Iraq." To be sure, he says, most Republicans supported the idea once Bush made the case for war. "When the president said this is important, 90 percent of the party said, 'OK,'" he continues. "You had a handful of intellectuals pushing it, and a handful of intellectuals opposing it. If the president had said, 'We're not doing Iraq,' everyone would have said, 'We're not doing Iraq.' If the Democrats had insisted on doing Iraq ... Republicans would be against it."

Columnist Thomas Friedman put the point this way in an interview in *Ha'aretz*: "I could give you the names of 25 people (all of whom are at this moment within a five-block radius of this office) who, if you had exiled them to a desert island a year and a half ago, the Iraq war would not have happened."

The election is still four months away, but the questions—about how this small group managed to incubate and hatch this war, about why other conservatives let it happen, about how the administration got so wrapped up with a character like Ahmad Chalabi—are already being asked. My discussions with conservatives reveal that should Bush lose the election and Iraq prove to be the deal breaker, the elements are in place for the GOP to undergo a major house cleaning. In a sense, that process has already begun—think of Chalabigate as the first strike in a much larger intra-Republican turf war.

The arguments are front and center in conservative foreign-policy circles at the moment. In late May I attended a party thrown by a young neoconservative writer in Washington and was struck by the endgame-scenario mindset: the sense of an imminent showdown, not between Republicans and Democrats, but between the neocons and the Republican establishment. Neocon Brahmin Lawrence Kaplan, writing in the June 21 *New Republic*, laments the waning influence of the necons and admits, "It appears nearly everyone in Washington is a realist now."

Neocon true believers dismiss such talk, insisting the party is solidly united. "Truth is, for better or worse, W has a stronger grip on his party than any Republican since Nixon, or possibly Theodore Roosevelt," says David Frum, the former Bush speechwriter. But others interviewed for this article assert that the showdown is real—real enough that establishment strategists are already mapping out a purge. "If the neocons cost Bush the election," one high-level party insider tells me, there will be a major shake-up in the Republican Party, with moves to neutralize the influence of the neocons in the party and in the configuration of any future Republican administration.

This insider, who had serious reservations about the war from the start but kept them to himself, acknowledges that if Bush does lose, the neocons will go into overdrive to spin the story their way. "[The American Enterprise Institute (AEI)] will go into a huddle and spend four years issuing a slew of papers justifying everything that was done—arguing that the war was a heroic effort, that the Bush administration did a great thing, and that the American people, just like the British after World War II, threw out Churchill." The neocons, the insider says, "think they're right but think the American people are too stupid to see it."

If the neocons cost Bush the election, one insider says, there will be a major shake-up in the Republican Party, with moves to neutralize the neocons' future influence.

LEOPARDS IN THE TEMPLE

The idea of cutting the neocons loose is nothing new in the Republican intellectual cosmos. The stakes are dramatically higher now, with the neocons inside the corridors of power rather than breathing fire from the sidelines, as they did during most of the last decade. But the Republican view of the neocons as loose cannons and ideological zealots has a history.

Though the neocons had their sights set on Iraq as long ago as the now-famous 1998 letter to President Clinton from the Project for the New American Century (and some neocons, to be sure, as soon as the Gulf War ended), it's largely forgotten that for most of the 1990s they were spoiling for a fight with another country. The central focus of neocon commotion during that period was a showdown with China. *The Weekly Standard* ran one saber-rattling polemic after another in the mid-1990s about the need for a confrontation with Beijing. Not only did these yowls fall on deaf ears in the Clinton White House; they were—and are—an embarrassment to most Republicans. Many of the conservatives I've spoken to emphasize this chapter in neocon history—call it the China syndrome—as a reminder of the unruliness of neocon thinking. The China syndrome extended into 2001: When Bush apologized to Beijing for the shooting down of a Chinese plane that spring, Kristol and Robert Kagan complained in *The Weekly Standard* that the president had brought a "profound national humiliation" upon the United States and enjoined it to rescind China's trade benefits.

That wasn't the only time however, the neocons (several of them, anyway) rammed heads with the party leadership.

During the last presidential election, Kristol and his fellow travelers managed to invite the wrath of the Republican establishment upon them when they threw their support behind John McCain's presidential candidacy—seeing in the Arizona senator the sort of muscular interventionist they'd long hankered for, the embodiment of the national greatness conservatism Kristol and David Brooks had theorized. But the McCain juggernaut abated, and GOP forces had Kristol and friends lined up like bowling pins. "After McCain loses," said one conservative at the time, "it's Bill Kristol who's finished."

But Kristol, who did not return several of my calls, embraced the persona of the party outsider. "Isn't it about time," he asked wistfully, "for another rebellion—or two? Couldn't this apparently drab and uninspiring moment turn out to be the precursor to a decade like the 1960s? Do we have no political diehards, out of step with the times, ready to reinvigorate our politics?

"Most Republicans," he confessed, strutting his iconoclastic and marginalized stuff, "don't want to see my face."

How times can change. Although the Bush foreign-policy team was designed as a balance of power, if you will, between neocons and old-school realists of the George Bush Senior variety (with the former in the Pentagon and the latter in the State Department), September 11 allowed the Vulcans, led by Paul Wolfowitz and the Ford-administration sleeper cell of Rumsfeld and Dick Cheney (in Eliot Weinberger's felicitous phrase), to commandeer the ship of state.

The neocons "got to" Bush after 9-11, a senior Republican strategist says, because "they were the only guys with a plan." He continues: "After you do Afghanistan, and the bloodlust wasn't sated, what do you do? Afghanistan wasn't enough. There were no big buildings—nothing went 'boom!' It wasn't a big enough response to September 11. We needed something bigger. And these guys came in with Iraq."

They got the administration to take up their Iraq plan. And for a while, as Baghdad was taken so quickly and at such minimal cost, it looked as if maybe the neocons *did* know the great secrets of history. But today, of course, the tables have turned yet again. And the establishment types are hoping to make the neocons feel their pain.

WIN OR LOSE

The specter of an intraparty backlash against the neocons, says more than one Republican strategist I talked to, doesn't necessarily depend on a Bush loss in November. "I doubt, even if Bush wins," says one, "that anyone's going to say, 'Boy, oh boy, [Bush] won because everybody was so excited about Iraq.'" On the contrary, he stresses, if Bush wins, "It will be *despite of* Iraq."

In that event, he says, the party will likely move to neutralize the neocons and the president will "return to his true self"—that is, to the "humbler," less ambitious Bush of the 2000 race who criticized nation building in the debates with Al Gore. To admit, in other words, that his "dad was right."

In fact, this strategist lays out a scenario by which a narrow Bush victory could make a purge easier to pull off. "If you *almost* lose," he says, "you have power and you can settle scores more easily than if you lose. If you lose, how do you expel the neocons? Where do you expel them from? From AEI? From the magazines [they publish]? You can't fire them from those jobs."

But if the GOP retains the White House, he continues, the neocons can be quietly frozen out. "All it really takes," the strategist says, is to stop listening. "You don't have to stop taking people's calls," he says. "You can just stop taking their advice. The way to do it is to invite them in for tea *more* than usual, and not take their advice." No one would notice they were being purged, he says, because the neocons "would never admit they were on the outs."

Freezing out the neocons wouldn't be as big a deal politically, he points out, as, say, freezing out the anti-abortion movement or the tax cutters, because those movements have troops behind them, people who can be mobilized. Freezing them out would mean "having a fight on your hands," whereas the neocons are too few in number to put up a real fight. Call it a bloodless purge. "Bush gets re-elected," says the strategist, "and these guys just dissipate."

TOO LATE FOR A CLEAN BREAK?

But such speculation raises the question of whether it is actually possible for the Republicans to put the neocon genie back in the bottle. It may be more difficult than these strategists think. Rick Perlstein, author of *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus*, notes that the conservative movement has displayed great dexterity in "policing its ideological borders" and "purging mavericks" from its ranks, as it did to the John Birch Society and the Ayn Rand people in the 1960s.

But if neoconservatism, as its founder, Irving Kristol, wrote in his 1995 *Neoconservatism: The Autobiography of an Idea*, has been "pretty much absorbed into a larger, more comprehensive conservatism," a purge might not be so simple, says Perlstein. "How can you hive off a part of your coalition that's become such an essential part of your conception of who you are?" he asks. "The extraction process might kill the patient."

Of course, it's still possible that the extraction process might not occur. For one thing, Republicans have been nothing if not disciplined; surely they will apply whatever Scotch tape and glue they need to in order to keep these rifts from becoming too public before November. For another, Iraq could yet "work out," at least in the sense that the situation will settle down a bit and elections will be held as scheduled.

But whatever the future brings, something dramatic has already happened—and continues to happen every day behind closed doors in conservatism's rarefied redoubts, where the quiet whir of confident manifestoes being typed out on computers has been replaced by the more insistent buzz of knives being sharpened. Irving Kristol famously defined a neoconservative as "a liberal who has been mugged by reality." Many Republicans—reaching the point of critical mass—are now coming to define themselves as conservatives who have been mugged by neoconservatives. If Bush loses the election over Iraq, their ranks will only grow more critical and more massive. But even if he wins, listen closely for the sounds of silence. ■

DANNY POSTEL *is the editor of the forthcoming book* Why Kosovo Matters. *He lives in Chicago.*

"Whatever your first issue of concern," media scholar Robert McChesney writes below, "media had better be your second, because without change in the media, progress in your primary area is far less likely."

Media concentration has reached unprecedented proportions in America. Where we once had a vigorous "press" that defined and defended the public interest, we now have a massive but monolithic "media" that obscures it.

The Center for American Progress and *The American Prospect* have joined together to sponsor the forum that follows, in which McChesney and three other leading media analysts ponder how we got where we are and what can be done about it.

In the future, a series of public forums—the first, co-sponsored with the World Policy Institute, is to be held at the New School University in New York on July 13—will examine the implications of media concentration for American democracy and explore the possibilities of building on recent organizing successes to reclaim the public sphere for the public interest.

The New School event will also feature the debut screening of *Out Foxed*, filmmaker Robert Greenwald's searing look behind the scenes at FOX News. —*Eric Alterman*

ERIC ALTERMAN *is a fellow at the Center for American Progress.*

WAGING THE MEDIA BATTLE

BY ROBERT W. McCHESNEY

OUR PRESS SYSTEM IS FAILING IN THE UNITED STATES, and we must be clear about why it is failing. The problem is not with poorly trained or unethical journalists; in fact, I suspect this may well be as talented and ethical as any generation of journalists in memory. Nor is the problem nefarious or corrupt owners.

Even if Rupert Murdoch and Sumner Redstone were to quit their jobs, change their names, and move off to New Mexico to do yoga and share a bong all day in a mountain cabin, the operations of the News Corporation and Viacom, respectively, would not change appreciably. Whoever replaced them would follow the same cues, with more or less success. But the logic of the system would remain intact.

That system is set up to maximize profit for a relative handful of large companies. The system works well for them, but it is a disaster for the communication needs of a healthy and self-governing society. So if we want to change the content and logic of the media, we have to change the system. And following my logic, we must change media content radically if we are going to have a viable self-governing society and transform this country for the better. As former Federal Communications Commission member Nicholas Johnson likes to put it: When speaking to activists and progressives, whatever your first issue of concern, media had better be your second, because without change in the media, progress in your primary area is far less likely.

LET'S BEGIN WITH THE OBVIOUS QUESTION: WHERE DOES our media system come from? In mythology, it is the result of competition between entrepreneurs duking it out in the

ILLUSTRATIONS BY JUSTIN WOOD

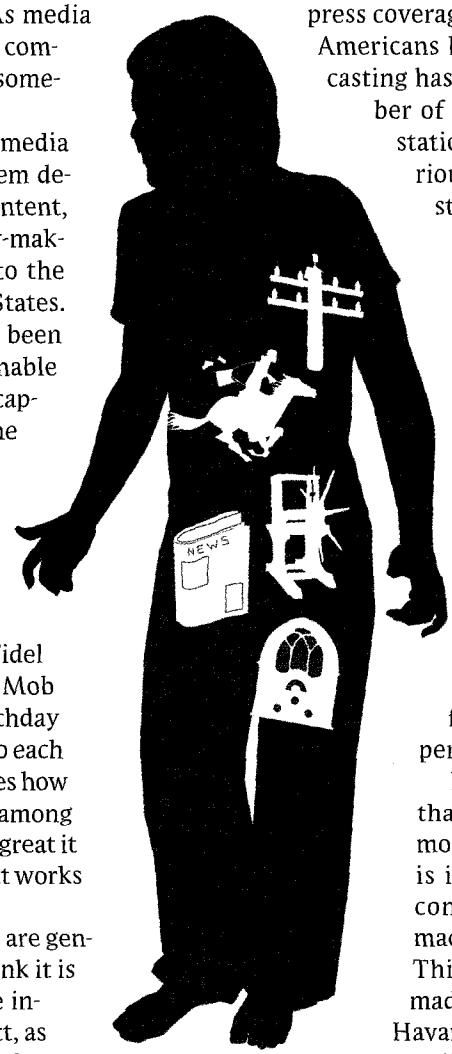
free market. In reality, our media system is the result of a wide range of explicit government policies, regulations, and subsidies. Each of the 20 or so giant media firms that dominate the entirety of our media system is the recipient of massive government largesse—what could be regarded as corporate welfare. They receive (for free) one or more of: scarce monopoly licenses to radio and television channels, monopoly franchises to cable- and satellite-TV systems, or copyright protection for their content. When the government sets up a firm with one of these monopoly licenses, it is virtually impossible to fail. As media mogul Barry Diller put it, the only way a commercial broadcaster can lose money is if someone steals from it.

If policies establish the nature of the media system, and the nature of the media system determines the nature and logic of media content, the nucleus of the media atom is the policy-making process. And it is here that we get to the source of the media crisis in the United States. Media and communication policies have been made in the most corrupt manner imaginable for generations. Perhaps the best way to capture the media policy-making process in the United States is to consider a scene from the 1974 Oscar-winning film *The Godfather II*. Roughly halfway through the movie, a bunch of American gangsters, including Michael Corleone, assemble on a Havana patio to celebrate Hyman Roth's birthday. This is 1958, pre–Fidel Castro, when Fulgencio Batista and the Mob ruled Cuba. Roth is giving a slice of his birthday cake, which has the outline of Cuba on it, to each of the gangsters. As he does so, Roth outlines how the gangsters are divvying up the island among themselves, then triumphantly states how great it is to be in a country with a government that works with private enterprise.

That is pretty much how media policies are generated in the United States. But do not think it is a conspiracy through which the corporate interests peacefully carve up the cake. In fact, as in the *Godfather II*, where the plot revolves around the Corleone-Roth battle, the big media trade associations and corporations are all slugging it out with one another for the largest slice of the cake. That is why they have such enormous lobbying arsenals and why they flood politicians with campaign donations. But, like those gangsters in Havana, there is one crucial point on which they all agree: It is their cake. Nobody else gets a slice.

The solution to the media crisis now becomes evident. We need to have widespread, informed public participation in media policy-making. This will lead to better policies and a better system. There are no magic cure-all systems, and even the best policies have their weaknesses. But informed public participation is the key to seeing that the best policies emerge, the policies most likely to serve broadly determined values and objectives.

Imagine, for example, that there had been a modicum of public involvement when Congress lifted the national cap on how many radio stations a single company could own in 1996. That provision—written, as far as anyone can tell, by radio-industry lobbyists—sailed through Congress without a shred of discussion and without a trace of press coverage. It is safe to say that 99.9 percent of Americans had no clue. As a result, radio broadcasting has become the province of a small number of firms that can own as many as eight stations each in a single market. The notorious Clear Channel owns more than 1,200 stations nationally.



As a result of this single change in policy, competition has declined, local radio news and programming have been decimated (too expensive and much less competitive pressure to produce local content), musical playlists have less nutrition and variety than the menu at McDonald's, and the amount of advertising has skyrocketed. This is all due to a change in policy—not to the inexorable workings of the free market. "There is too much concentration in radio," John McCain said on the Senate floor in 2003. "I know of no credible person who disagrees with that."

Radio has been destroyed. A medium that is arguably the least expensive and most accessible of our major media, that is ideally suited for localism, has been converted into a Wal-Mart–like profit machine for a handful of massive chains. This can only happen when policies are made under the cover of night. Welcome to Havana, Mr. Corleone.

Radio is instructive also because it highlights the propagandistic use of the term "deregulation." This term is often used to describe the relaxation of media ownership rules, even by opponents of rules relaxation. The term deregulation implies something good: that people will be less regulated and enjoy more liberty. Who could oppose that? Radio broadcasting is the classic case of a deregulated industry. But just how deregulated is it? Try testing this definition of deregulation by broadcasting on one of the 1,200 channels for which Clear Channel has a government-enforced monopoly license. If you persist, you will do many years in a federal penitentiary. That is very serious *regulation*. In fact,

all deregulation means in radio is that firms can possess many more government-granted and government-enforced monopoly licenses than before.

As the radio example indicates, we have a very long way to go to bring widespread and informed public participation to media-policy debates. The immediate barrier is the standard problem facing democratic forces in the United States: The corporate media political lobby is extraordinarily powerful and is used to having its way on both sides of the aisle in Congress. Moreover, corporate media power is protected from public review by a series of very powerful myths. Four of these myths in particular need to be debunked if there is going to be any hope of successfully infusing the public into media-policy debates.

THE FIRST MYTH IS THAT THE EXISTING PROFIT-DRIVEN U.S. media system is the American way, and that there is nothing we can do about it. The Founders, this myth holds, crafted the First Amendment to prevent any government interference with the free market. In fact, this could hardly be more inaccurate. Freedom of the press was seen more as a social right belonging to the entire population than as a commercial right belonging to wealthy investors. The establishment of the U.S. Post Office provides a dramatic case in point.

In the first generations of the republic, newspapers accounted for between 70 percent and 95 percent of post-office traffic, and newspapers depended upon the post office for the distribution of much of their circulation. A key question facing Congress was what to charge newspapers to be mailed. No one at the time was arguing that newspapers should pay full freight, that the market should rule; the range of debate was between those who argued for a large public subsidy and those who argued that all postage for newspapers should be free, to encourage the production and distribution of a wide range of ideas. The former position won, and it contributed to a massive flowering of print media in the United States throughout the early 19th century. What is most striking about this period, as Paul Starr argues in his new book, *The Creation of the Media,* is that there wasn't rhetoric about free markets in the media, nor about the sacrosanct rights of commercial interests. That came later.

You think our current media system is a function of the free market? Welcome to Havana, Mr. Corleone.

The second myth is that professional practices in journalism will protect the public from the ravages of concentrated private commercial control over the news media—and that therefore we need not worry about the media system or the policies that put it into place. The notion of professional journalism dates to the early 20th century, by which time the explicit partisanship of American newspapers had come to resemble something akin to the one-party press rule of an authoritarian society. The solution to this problem was to be professional autonomy for journalism. Trained professional journalists who were politically neutral would cover the news, and the political views of the owners and advertisers would be irrelevant (except on the editorial page). There were no schools of journalism in 1900; by 1920 many of the major schools had been established, often at the behest of major publishers.

Professional journalism was far from perfect, but it looked awfully good compared with what it replaced. And at its high-water mark, the 1960s and '70s, it was a barrier of sorts to commercial media ownership. But the autonomy of journalists was never written into law, and the problem today is that as media companies have grown larger and larger, the pressure to generate profit from the news has increased. That has meant slashing editorial budgets, sloughing off on expensive investigative and international coverage, and allowing for commercial values to play a larger role in determining inexpensive and trivial news topics. In short, the autonomy and integrity of U.S. journalism has been under sustained attack. This is why journalists rank among the leading proponents of media reform. They know firsthand how the media system is overwhelming their best intentions, their professional autonomy. And unless the system changes, there is not hope for a viable journalism.

The third myth is probably the most prevalent, and it applies primarily to the entertainment media, though with the commercialization of journalism, it is being applied increasingly there, too. This is the notion that as bad as the media system may seem to be, it gives the people what they want. If we are dissatisfied with media content, don't blame the media firms; blame the morons who demand it. This is such a powerful myth because it contains an element of truth. After all, what movie studio or TV network intentionally produces programming that people do not want to watch? The problem with it, as I detail in *The Problem of the Media*, is that it reduces a complex relationship of audience and producers to a simplistic one-way flow. In oligopolistic media markets, there is producer sovereignty, not consumer sovereignty, so media firms give you what you want, but only within the range that generates maximum profits for them. Supply creates demand as much as demand creates supply.

And some things are strictly off-limits to consumer pressure. Media content comes marinated in commercialism, although survey after survey shows that a significant percentage of Americans do not want so much advertising (65 percent, according to an April 2004 survey by Yankelovich Partners, believe they are "constantly bombarded with too much" advertising). But don't expect a mad dash by media corporations to respond to that public desire. It is difficult, if not impossible, to use the market to register opposition to hypercommercialism—that is, to the market itself. Further, the media system clearly generates many things that we do *not* want. Economists call these externalities—the consequences of market transactions that do not directly affect the buyer's or seller's decision to buy or sell but have a significant effect, and can level massive costs, upon society.

Media generate huge negative externalities. What we are doing to children with hypercommercialization is a huge externality that will almost certainly bring massive social

costs. Likewise, dreadful journalism will lead to corrupt and incompetent governance, which will exact a high cost on all of our lives, not just those who are in the market for journalism. The long and short of it is that the market cannot effectively address externalities; it will require enlightened public policy.

The fourth myth is that the Internet will set us free. Who cares if Rupert Murdoch owns film studios and satellite-TV systems and TV stations and newspapers? Anyone can launch a blog or a Web site and finally compete with the big guys. It is just a matter of time until the corporate media dinosaurs disappear beneath the tidal wave of new media competition.

The Internet and the digital-communications revolution are, in fact, radically transforming the media landscape, but how they do so will be determined by policies, not by magic. The Internet itself is the result of years of heavy public subsidy, and its rapid spread owed to the open-access "common carrier" policy forced upon telecommunications companies. How the Internet develops in the future will have everything to do with policies, from the copyright and the allocation of spectrum to open wireless systems to policies to assist the production of media content on the Internet. The one point that is already clear is that merely having the ability to launch a Web site does not magically transform media content. That will require public policy.

SO, AGAIN, THE MORAL OF THE STORY IS CLEAR: if we wish to change the nature of media content, we have to change the system. If we wish to change the media system, we need to change media policies. And if we wish to change media policies, we have to blast open the media policy-making process and remove it from the proverbial Havana patio.

My sense is that the more widespread public participation there is in media policy-making, the more likely we are to have policies to encourage a more competitive and locally oriented commercial media system, as well as a much more prominent and heterogeneous nonprofit and noncommercial media sector. But if there is a legitimate public debate, I will certainly live with the results, whatever they might be.

From the emergence of the corporate media system more than a century ago to the present, the dominant commercial interests have done everything within their considerable power to keep people oblivious to the policies made in their name but without their informed consent. There have been a handful of key moments when media policy-making became part of the public dialogue. For example, in the Progressive Era, the corruption, sensationalism, and pro-business partisanship of much of commercial journalism produced a crisis that led to widespread criticism of capitalist control of the press, and even to movements to establish municipal or worker ownership of newspapers. In the 1930s, a fairly significant movement arose that opposed the government secretly turning over all the choice monopoly radio channels to owners affiliated with the two huge national chains—NBC and CBS—and calling for the establishment of a dominant noncommercial broadcasting system. I will not keep you in suspense: These movements failed.

But following World War II, media policy-making has increasingly gravitated to the Havana patio. As a result, our media system is increasingly the province of a very small number of large firms, with nary a trace of public-service marrow in their commercial bones. Regulation of commercial broadcasting degenerated to farcical proportions, as there was no leverage to force commercial broadcasters to do anything that would interfere with their ability to exploit the government-granted and -enforced monopoly licenses for maximum commercial gain.

The prospects for challenging the corrupt policy-making process seemed especially bleak by the 1990s with the ascension of neoliberalism. Even many Democrats abandoned much of their longstanding rhetoric about media regulation in the public interest and accepted the "market über alles" logic.

So when the FCC announced it would review several of its major media-ownership rules in 2002, nearly everyone thought it was a slam dunk that the commission would relax or eliminate the rules. After all, a majority of the FCC's members were on record as favoring the media firms getting bigger—even before they did any study of the matter. The media giants hated these rules and were calling in all their markers with the politicians so they could get bigger, reduce competition and risk, and get more profitable—and it didn't look as if anything could prevent them from winning.

But over the course of 2003, the FCC's review of media-ownership rules caused a spectacular and wholly unanticipated backlash from the general public. Literally millions of Americans contacted members of Congress or the FCC to oppose media concentration. By the end of 2003, members of Congress were saying that media ownership was the second-most-discussed issue by their constituents, trailing only the invasion and occupation of Iraq. It is safe to say that media issues never had cracked the congressional "top 20" list in decades. What was also striking was how much of the opposition came from the political right, as well as a nearly unified left. In September 2003, the Senate overturned the FCC's media rules changes by a 55-to-40 vote; the House leadership is currently preventing a vote among representatives, and the matter is under review

in the courts. If the Democrats win the White House, the FCC proposals will almost certainly be smashed.

But what drove millions of Americans to get active on media ownership in 2003 was not a belief that the status quo is quite good, or that the problem with rules changes is that they will remove the media from its exalted status. To the contrary, the movement was driven by explicit dissatisfaction with the status quo and a desire to make the system better. Years of frustration burst like an enormous boil when Americans came to the realization that the media system was not "natural" or inviolable but the result of explicit policies. Surveys showed that the more people understood media as a policy issue, the more they supported reform. Once that truth is grasped, all bets are off.

Coming off the media-ownership struggle, there is extraordinary momentum. Scores of groups have emerged over the past few years—local, national, and even global in scope—organized around a wide range of issues. In the coming few years, expect to see major progressive legislation launched to restore more competitive markets in radio and television; to have antitrust law applied effectively to media; to have copyright returned to some semblance of concern for protecting the public domain; to have viable subsidies put in place that will spawn a wide range of nonprofit and noncommercial media; to have a wireless high-speed Internet system that will be superior and vastly less expensive than what Mr. Roth and Mr. Corleone (the cable and telephone companies) have in mind; to have real limitations on advertising and commercialism, especially that aimed at children; to have protection for media workers, so they can do their work without onerous demands upon their labor by rapacious owners. The list goes on and on.

All of these measures would have been unthinkable just a year or two ago. Now they are in play. One of the exciting developments of the last year has been the recognition that media activism is flexible politically. Unlike campaign-finance reform, where anything short of fully publicly financed elections leaves open a crack that big money exploits to destroy the reforms, media activism allows for tangible piecemeal reforms. We may well get several hundred additional noncommercial FM stations on the dial this year, largely as a result of sustained activism. Those stations will be a tangible demonstration to people of what they can achieve, and they will spur continued activism. And media reform allows for a broad array of alliances, depending upon the issue, as the 2003 media-ownership fight demonstrated. Indeed, media activism might just be the glue to sustain a progressive democratic vision for the nation's politics.

But it will not be an easy fight, not at all. This is a long-term struggle, a never-ending one. What we know is that it is impossible to have a viable democracy with the current media system, and that we are capable of changing this system. The future depends upon our being successful. ■

ROBERT W. MCCHESNEY *is a professor at the University of Illinois at Urbana-Champaign, the author of 11 books, and the co-founder and president of Free Press, a nonpartisan organization devoted to increasing informed public participation in media-policy debates.*

Blog Heaven

BY ARIANNA HUFFINGTON

ROBERT MCCHESNEY WILL GET NO ARGUMENT FROM ME on the vital importance of fighting to change the many ways our government policies have made possible the ongoing consolidation of media outlets into fewer and fewer corporate-controlled hands. Having the media controlled by roughly 20 or so megacorporations has clearly had a deleterious effect—lessening competition, squelching dissent, choking off debate, and elevating profit over the public good. But breaking the government-sanctioned monopolies of the media giants, while an essential step, is only part of the solution.

It's kind of like upgrading a computer. We absolutely must rewire the hardware by changing the way our government regulates the media. But we must also reprogram the software by finding ways to give mainstream journalism that which it most desperately needs: a spine transplant.

Battered by the Jayson Blair and Jack Kelley scandals, bloodied by the furor surrounding *The New York Times'* deeply flawed coverage during the run-up to war in Iraq, mainstream journalism is in a free fall, facing the ongoing defection of young Americans who would rather get their news from *The Daily Show*. And who can blame them? I'll take a Jon Stewart rant or a Tina Fey zinger over a *New York Times*-plays-Charlie-McCarthy-to-Ahmad-Chalabi's-Edgar-Bergen front-page spin-fest every time.

In biblical times, Jonah was condemned to a dark journey in the belly of a whale for his complacency and relentless triviality. Today, thanks to the Fourth Estate's complacency and relentless triviality, the American people have been condemned to *USA Today* pie charts, brain-dead local news reporting, the latest on the Scott Peterson jury, and the endlessly repeated bleating of the denizens of the Beltway echo chamber.

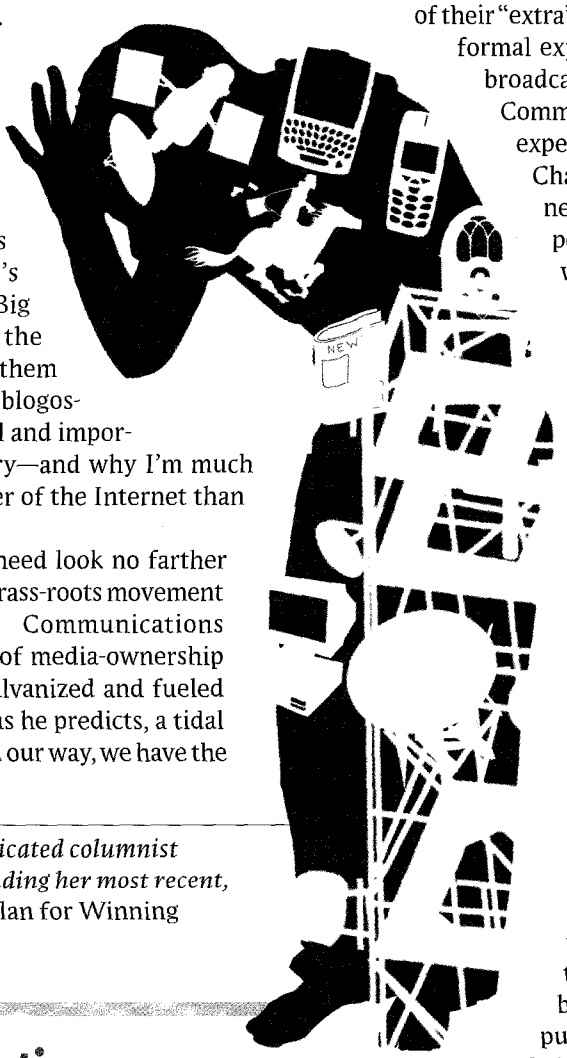
It takes a lot of energy to swim against the prevailing current. So the vast majority of mainstream journalists head in the direction the assignment desk points them. That's why we see so many stories tracking the results of the latest polls. Quoting polling data is now synonymous with reporting at many news organizations. As a result, polling data often become a self-fulfilling prophecy: Reporters are often reluctant to take on politicians with robust job-approval ratings. We saw it in the heady early days leading up to the Iraq War, when the president's 77-percent rating acted like a flak jacket, a Kevlar statistic cloaking him in an aura of invincibility.

And we're seeing it again in the coast-to-coast praise being lavished on California Governor Arnold Schwarzenegger. A *New York Times* editorial recently claimed "the last action hero can seemingly do no wrong"—a case of glaring hyperbole (just ask the tens of thousands of students unable to go to college next year because of the $660 million cut from higher education in the state) that never would have made it to newsprint if not for the governor's high poll numbers.

One of the main charges leveled at *The New York Times* by its own public editor, Daniel Okrent, was that too often it had

engaged in "hit-and-run journalism"—breaking an important story and then moving on, without sufficient follow-up. It's a charge that could have been directed at big media in general. Our 500-channel universe doesn't mean that we are getting 500 times the examination and investigation of worthy stories. It means we get the same narrow, conventional-wisdom wrap-ups repeated 500 times.

That's why I am such a big fan of Internet-based reporters and bloggers. When these folks decide that something matters, they chomp down hard and refuse to let go. They're the true pit bulls of reporting. The only way to get them off a story is to cut off their heads (and even then you need to pry their jaws open).



And because of the nature of Internet journalism, they will often start with a small story, or a piece of one—a contradictory quote, an unearthed document, a detail that doesn't add up—that the big outlets would deem too minor. But it's only minor until, well, it's not. Big media can't see the forest for the trees—until it's assembled for them by the bloggers. That's why the blogosphere has become the most vital and important news source in our country—and why I'm much more optimistic about the power of the Internet than McChesney is.

For proof of this power, he need look no farther than his own celebration of the grass-roots movement that derailed the Federal Communications Commission's planned erosion of media-ownership rules—a movement that was galvanized and fueled by Internet-based activists. If, as he predicts, a tidal wave of media activism is headed our way, we have the Internet to thank for it. ■

ARIANA HUFFINGTON *is a syndicated columnist and the author of 10 books, including her most recent,* Fanatics and Fools: The Game Plan for Winning Back America.

The Business Motive

BY JAMES FALLOWS

I GUESS I OFFICIALLY QUALIFY AS AN OLD FART NOW. I agree with much of Robert McChesney's diagnosis of the media's problems; I just lack faith in the prescription. I think that the "media politics" syndrome he describes has reached its advanced stages—too advanced, in my view, to be corrected or cured in the foreseeable future. The remaining hope, therefore, is to acknowledge the existence of this disorder and use that knowledge to offset or limit its most damaging effects.

Most of the phenomena McChesney describes, including media concentration, are actually reflections of a more powerful and disturbing trend. That trend is the conversion of the media business to "just another business."

As recently as the 1960s, much of the newspaper and broadcast-news industry stood apart from the mainstream of corporate America. Obviously it *was* a business, as the great newspaper-family fortunes attest. But the fundamental goals of large news organizations were more complicated than those of, say, Mattel or Citibank. Mattel just had to make money. The *Los Angeles Times*, the news division of ABC, *Newsweek* magazine, and other news businesses had to make money, too—but they also had to meet formal and informal expectations of their "extra" duties as part of the Fourth Estate. The formal expectations included those imposed on broadcasters by the Federal Communications Commission. The informal ones included the expectations of Sulzbergers, Grahams, and Chandlers about the way their family businesses should behave—not to mention expectations from employees and managers, who quaintly thought their organizations were serving more than purely commercial ends.

As a business proposition, it was highly risky for *The Washington Post* to go after the Nixon administration over the Watergate scandal. But the Graham family's conception of its paper's role practically required it to behave "abnormally" for a corporation. (As McChesney says, the *Prospect*'s own Paul Starr admirably traces the history of these conflicting ambitions in his new book, *The Creation of the Media.*)

Obviously the existence of nonbusiness motives in the media business had its imperfections. For instance, William Loeb. (For youngsters: As the longtime publisher of the Manchester *Union Leader* in New Hampshire, Loeb prefigured Rush Limbaugh's role as a bully from the right wing.) And obviously there are significant parts of the news business that still resist the gravitational pull toward the corporate-finance realm. Opinion magazines, from right and left, wish they had a normal business base; National Public Radio exists on grants and contributions; the three strongest newspapers in the country—*The New York Times*, *The Washington Post*, and *The Wall Street Journal*—are protected by abnormal corporate structures that leave their respective noblesse-oblige families in control.

But those are, at best, interesting exceptions to the fundamental trend. Media companies, like banks or fast-food chains, are basically under pressure to do more of whatever makes money and less of whatever does not. In a media world configured this way, the results are more or less inevitably those that McChesney describes. There are specialized publications offering high-end news to people willing and able

to search or pay for it. (There are also reporters and broadcasters and even bloggers doing their level best every day to report on and explain the world.) And there is infotainment for the general public.

Can it be any different? Not unless the "differentness" of the news business is re-recognized and re-established. In his book, Starr emphasizes that the public, through political choice, sets rules for the media that reflect the temper of a given era. When a new republic was being formed, the rules encouraged the media to serve democratic ends. The rules of this era allow the media to serve strictly commercial ends.

I hope for a different set of expectations, but I'm not holding my breath. ■

JAMES FALLOWS, *a national correspondent for* The Atlantic Monthly, *is the author of* Breaking the News: How the Media Undermine American Democracy.

Check and Balance

BY PAUL STARR

FROM THE NATION'S FOUNDING, THE UNITED STATES HAS promoted communications through constitutional guarantees, favorable legislation, and extensive subsidies. There has been nothing sinister about this bias. Although the purposes have varied, the support—first for the press and later for other media—has helped to create a rich and diverse sphere of public debate and a dynamic and innovative industry. But the very success of that policy has also created a dilemma, as ownership has become concentrated in a few hands and the most powerful private interests have bent the law to their own advantage. Ideally, the media guard the public against abuses of power. It's not so clear how to guard against the power that the media themselves acquire.

As a political lobby, the media are a daunting force. Corporations in most industries enjoy influence primarily through representatives of the congressional districts and states where company headquarters, facilities, and jobs are located. The media, however, are ubiquitous, and politicians are especially reluctant to offend them because of their own needs for news coverage and publicity.

The First Amendment also puts the media in a distinctive position in relation to campaign-finance laws. Only media corporations can make what are, in effect, unlimited contributions by promoting the candidates they favor. Rupert Murdoch can put FOX and his entire empire at the service of a candidate or a cause. That's his right. But hardly anyone else can put comparable resources to political use at election time.

Although power of this magnitude usually gets its way, commercial media interests are divided in many regulatory and antitrust disputes. The effort to limit media concentration also reaches across ideological lines and enjoys wide public support (as has been evident in the fight against the Federal Communications Commission's lifting of ownership caps). For while liberals worry about Murdoch, conservatives worry about Hollywood and "liberal bias" in the news. Perhaps the one positive effect of these shared suspicions of media power is an interest in limiting the concentration of ownership.

Opponents of media concentration can also make use of another intangible asset. The United States has a tradition of actively supporting a pluralistic and decentralized press. The key institution was originally the Post Office, which long provided subsidized rates to newspapers (and later magazines) regardless of viewpoint. In the mid-19th century, Congress even allowed newspapers to send copies for free to subscribers who lived in the same county, a measure designed to protect local papers (and no doubt local politicians) against the growing metropolitan press. Even in broadcasting, which during its first decades was dominated by two or three national networks, most stations were locally owned and managed. And until recently, the FCC imposed very low caps on the number of stations that any single organization could own.

This longstanding resistance to concentrated control faded in the past decade, as many policy-makers came to believe that new digital media made the earlier caps on ownership unnecessary. The full picture, however, is more complicated than this happy view suggests. Americans do have access to far more TV channels than in the past, but five organizations now control enough of those channels to command 75 percent of the prime-time audience. After the Telecommunications Act of 1996 removed the national cap on radio-station ownership, two companies—Clear Channel and Viacom—accumulated enough of the strong stations to give themselves 70 percent of the revenue in radio. No doubt the Internet affords countless groups low-cost means of communication, but traffic is concentrated on sites controlled by the same corporations that dominate other media.

Moreover, the forces that sustained public-minded journalism have grown weaker in recent decades. The FCC no longer uses its authority to promote public-affairs programming in the broadcast media, which have cut back the money and airtime they devote to news and public issues. The big question facing the media, as Harold Evans has said, is not whether they will stay in business but whether they will stay in journalism.

We need the equivalent of the postal policies of the early republic that promoted free expression and a diversity of public voices. Here are a few things that might be on such an agenda: First, Congress should rewrite the 1996 telecom act to preserve existing limits on media ownership and reinstate tighter limits in radio. Second, to help ensure that public broadcasting receives adequate financing, Congress could set aside the proceeds from spectrum sales for an endowment. Third, in its current re-evaluation of "must carry" rules (which require cable-television companies to carry local broadcast stations), the FCC should stipulate that the broadcasters could invoke the requirement only if they supply some minimum level of public-affairs programming. And, fourth, to make broadband Internet more widely available, wireless access in densely populated areas should be provided as a free public utility.

Copyright, First Amendment jurisprudence, and other areas of law and policy need a fresh look—all with an eye to fulfilling the promise of new technology to diversify and enrich our public life instead of narrowing and impoverishing it. ■

Currents

MEDIA

It Was a Very Bad Year

There's little to celebrate about Bill Keller's first anniversary at the helm of *The New York Times*. And the Judith Miller fiasco is only part of the problem.

BY TODD GITLIN

THERE WAS A TIME WHEN READERS of *The New York Times* never knew what they were missing. You had to run down to Hotaling's, the out-of-town newsstand in Times Square, to check *The Washington Post* or the *Los Angeles Times,* or wait a few days for the *Manchester Guardian*. Or you subscribed to *I.F. Stone's Weekly* and relied on him to call your attention to the 23rd paragraph of the *Times* piece, the one where your eyes had glazed over but Izzy had unearthed some nugget that shattered the story's otherwise anodyne arc.

Today, all a reader need do to shine a light on the paper is log on and surf around to see what the *Times*—"the indispensable newsletter of the United States' political, diplomatic, governmental, academic, and professional communities, and the main link between those communities and their counterparts around the world" (according to ex–Executive Editor Howell Raines' unexceptionable summary in his recent, impassioned, self-serving, and, by many accounts, at least half-right *Atlantic Monthly* article)—has missed, buried, or fuzzed. *The New Yorker* features the stellar investigations of Seymour Hersh, whose indispensable X-rays of hush-hush government agencies once graced the *Times*. *Slate*'s "Today's Papers" routinely specifies the *Times'* misjudgments of omission, commission, and

GETTY IMAGES

Bill of Wrongs: *Times* Executive Editor Keller

position—placement, in other words—as do any number of persnickety bloggers with hours to fill and advanced degrees in the arts of close reading.

July brings us the one-year anniversary of Executive Editor Bill Keller's ascension to the top job in the wake of Raines' departure following the Jayson Blair scandal. It has not been a banner year.

Rectification has never run so rife—or been so overdue. Thanks to Michael Massing's investigation, published in *The New York Review of Books* under the apt headline "Now They Tell Us," reporter Judith Miller's credulous prewar claims about purported Iraqi biological and chemical weapons have been thoroughly debunked (February 26, followed by Miller's flimsy response and Massing's counter-response on March 25). Massing mentions, for example, a December 20, 2001, front-page *Times* article by Miller, sourced to a single Iraqi defector brought forward by Ahmad Chalabi's Iraqi National Congress in Thailand and later cited prominently by an administration broadside, "A Decade of Deception and Defiance." But according to Knight-Ridder's crackerjack Jonathan S. Landay (May 18), CIA and Defense Intelligence Agency experts had discredited this defector three days before the *Times* article appeared. The *Times* had shepherded a deceiver to global attention.

And now, in the backwash of such voluminous and meticulous charges that the *Times* swallowed way too much of the administration's case for war in Iraq, you can read the *Times* own self-criticism in ... *The New York Times*. First came 1,145 words "From the Editors" on page A10 of May 26, declaring, "It is past time we turned [the bright light of hindsight] on ourselves" while blandly noting that some Iraq coverage by unspecified reporters "was not as rigorous as it should have been." In March, Keller had written on public editor's Daniel Okrent's blog: "I did not see a prima facie case for recanting or repudiating [Miller's] stories ... . Second, lacking prima facie evidence, opening a docket and litigating the claims against the coverage was likely to consume more of my attention than I was willing to invest." So *Times* readers had to wait until the grand pooh-bah of sources, Ahmad Chalabi, had fallen from grace, accused of passing secrets

to the Iranian mullahs, before the bright light of hindsight succeeded in penetrating the fog of journalism.

Then, on May 30, Okrent checked in with 1,849 more pungent, name-naming words. But for Max Frankel, the former *Times* Washington bureau chief and executive editor, it's still not enough.

"It's getting there, isn't it?" Frankel said to me a couple of days later. Earlier, he'd told me that Keller's private review "doesn't excuse our not going back to look at our own coverage. Even if the sourcing was proper. I think at some point a long takeout is called for, maybe in the 'News of the Week in Review' [section]. I once put a correction—our coverage of Oliver North's testimony—in 36-point type on page 1.

"I thought Okrent's take on the whole situation was fine," Frankel went on. "I couldn't have asked for a better expression. But ideally, the people who were involved should be heard from. Why should I have to read *The New York Review of Books* for what [Pentagon correspondent] Michael Gordon or Judy Miller have to say? I would have sat down a long time ago and said, 'Judy, sit down and write me a long memo and tell me just what happened. Now that your sources are out of the bag and don't have to be protected, let's turn that into a story.'

"Whether she's capable of writing it or the editors do is a detail. If you're going to teach both the readers and the profession, you want them to know more of what you do. What are our methods like, from protection of sources to the way we make assignments to the collaboration of reporters and editors? We still need a big retrospective look at what happened."

Not three pages. But more than we've seen. Full disclosure.

Keller, however much appreciated by the staff for not being the imperious Raines, had been under pressure. Another distinguished veteran *Times*-man (call him V.T.) had told me, "The Miller problem is not so much what she wrote before the war—we'd all like not to be snowed by the administration, but sometimes we are—but what hasn't happened since. [The *Post*'s] Barton Gellman's reaction afterward was, 'Where the hell [are these weapons of mass destruction]? Were you jerking us around?'"

"Judy Miller's reaction was, 'Look over here, look over there for WMD.' She has energy and drive, and can be a terrific reporter, and has been, on bioterrorism and [Osama] bin Laden," V.T. declared, but added that "a delegation of important editors, some of whom are on the masthead, went to Keller and told him they didn't trust her. There are several reporters in the bureau who refuse to put their names on stories with her now, because they don't trust her."

Says former Editor Frankel: "I would have sat down a long time ago and said, 'Judy, sit down and write me a long memo and tell me just what happened.'"

The scandalous Jayson Blair fabrications were stinking fish in a barrel. The Miller problem, which is also her editors' problem, goes to something deeper: the everyday slackness and gullibility, the on-the-one-hand, on-the-other-hand blah-blah and other unreflective stenography that passes for "coverage" of the most powerful government in the history of the world. Omission includes the failure to connect dots. Position means dumping the tough stuff in the back pages. Leave aside the case of the missing weapons of mass destruction and the *Times* has still not covered itself with glory.

"Stenographers with amnesia," Jack Newfield once called Washington reporters. To be fair to the *Times*, every journalist I interviewed for this story agreed that the current administration is more clammed-up and robotically on message than any other in history. How to cover this White House (in anything other than gauze) is driving every Washington bureau crazy, even as the administration's seams are starting to show. One recently departed White House reporter for a major newspaper told me, "This White House is extremely difficult, if not impossible, to cover. The editors need to realize their journalists are like in straitjackets. When it came to [Monica] Lewinsky and [Bill] Clinton's campaign finances, White House reporters had help from investigative reporters. Where are they now?"

Frankel says categorically, "You can't get news out of the White House. You have to go up to Capitol Hill and see what they're doing there, you have to go to the departments and agencies .... If there's anything missing, it's the single voice pulling it all together."

Still, despite intermittent signs of catch-up in recent days, the *Times* has embarrassed itself in Washington—even in the eyes of some of the paper's best and brightest. When I asked V.T. to characterize the paper's Washington coverage, the first word from his lips was "flabby." He went on: "For all the awfulness of the way [Raines] expressed himself [in the *Atlantic*]—with all the adjectives he threw around, and however unfair he has been to many individuals—the idea that the place gets complacent is not crazy. It isn't a hungry place."

One of the *Times*' own investigative reporters (call him I.R.) told me: "Match the *Times* against *The Washington Post*. They're getting their clock cleaned. It's obvious to everyone except the top editors of *The New York Times*." The paper's Washington bureau "tends to be very slow. There's a lot of really fine work being done"—for example, Steven Labaton's 2002 exposés on Harvey Pitt's reign of error atop the Securities and Exchange Commission, and Robert Pear's May 19 front-pager, "White House Is Trumpeting Programs It Tried to Cut"—"but that said, it is not overall as aggressive, as innovative, and especially as enterprising as even readers expect that it should be. You don't have any sense from the Washington bureau that there's a government—just a lot of politics. They are not picking up the 'Statistical Abstract [of the United States]' or the federal budget. The bureau is clearly not getting hell from New York for the fact that they're getting

beat by *The Washington Post* and the *L.A. Times* and even *USA Today.*"

When George W. Bush bashed John Kerry as a man who was out to "gut the intelligence services" by proposing, in 1995, a $1.5 billion budget cut over five years (so "deeply irresponsible," Bush said, that Kerry couldn't even line up another senator to co-sponsor his bill), the *Times* on March 9 teased the charge on page 1. It treated the question as a politicians' he-said, she-said—not even a horse race for the truth but a dog race of yapping pols. But Richard W. Stevenson and Jodi Wilgoren never got around to asking the outstandingly significant question, namely, was Bush's charge true? By contrast, on March 12, the *Post*'s indefatigable Walter Pincus and Dana Milbank actually looked up the bill, itemized its contents, and noted that "the Republican-led Congress that year approved legislation that resulted in $3.8 billion being cut over five years from the budget of the National Reconnaissance Office—the same program Kerry said he was targeting."

Pincus and Milbank also observed that a similar Republican measure to cut unused funds, which Kerry co-sponsored, passed with the support of the GOP leadership. The *Post*'s headline writer got the point: "Bush Exaggerates Kerry's Position on Intelligence Budget." Eight days later, the *Times* got this onto page A10—in the 25th paragraph of a Katherine Seelye piece.

Despite good reporting on campaign finance by the Washington bureau's Glen Justice, the *Times* keeps missing the Republican establishment's money connections. As Joe Conason pointed out on *Salon,* a shallow May 16 profile of Republican National Committee Chairman Ed Gillespie omitted any serious mention of Gillespie's erstwhile lobbying firm's clients, including Enron and Airbus Industrie—the latter being an amusing choice, to say the least, for a man who trashes Kerry by calling him "French."

And then there's Elisabeth Bumiller, the incumbent White House correspondent. No wonkish truth-excavating or tedious record-scouring for Bumiller. Granted, she must run into White House stonewalls all the time. But do *Times* readers really need odes to Bush's punctuality (March 15) and his mountain-biking prowess (May 31)? And somehow, her tone seems to change when she's dealing with Democrats. When Bumiller appeared on television to question the Democratic candidates before the New York primary, one of her contributions to the interrogation of Kerry was the perversely memorable: "Are you a liberal? Are you a liberal?" As time ran out, Bumiller followed up with that burning probe, "Really quick, is God on America's side?"

The *Times* isn't only scooped by *The Washington Post* and Knight-Ridder. Neighboring *Newsday* had it beat on the Joseph Wilson–Valerie Plame CIA-leak story from the start, noting, for example, as the *Times* did not, that the transcript of an Ari Fleischer press conference discussing Wilson's report to the CIA on the mysterious Niger uranium is missing from the White House's Web site, which posts other transcripts, as if the spirit of Niger yellowcake had migrated over to the White House webmaster (March 5). It was *Newsday,* not the *Times,* that first called attention to the fact that somebody had violated the law by leaking Plame's status to columnist Robert Novak last July.

Let's not get lost in a haze of nostalgia. The Washington bureau's ball-of-fire days were intermittent, and getting the story first isn't everything (getting it thorough is better). Well into the 1960s, the *Times* was unabashed about its stenographic ambitions. The paper was famously late and meager on Watergate (on Frankel's watch, as he acknowledges). Then, impressively, during the Vietnam-Nixon years, the *Times* did get behind the White House facade. In 1970, the *Times* ran a long news analysis by then–bureau chief Frankel proposing 30 questions for the incumbent Richard Nixon. Afterward, Hersh was hired to grace the *Times'* pages.

So why hasn't George W. Bush been publicly asked the equivalent questions? Lingering fear of committing lèse-majesté? Dread of casting discredit in sort-of wartime? Reluctance to appear rambunctious lest the denunciations of "liberal media" resound even louder? Refusal, in the words of another former staffer, "to commit re-

sources to burrowing into the agencies"? Unwillingness to invoke what I.R. calls "reportorial authority," so that "when the president says the sun rose in the West, we take it upon ourselves to say 'no'"?

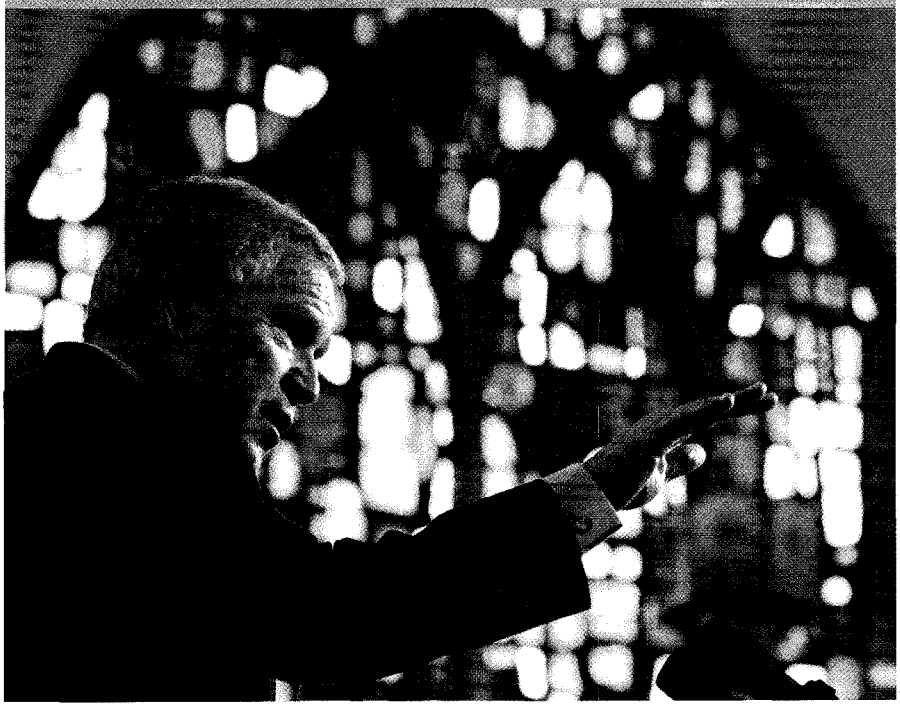
"Is it laziness?" I.R. asks rhetorically. "No, it's not laziness. People are in there for long hours. *There's no editorial leadership.*"

Keller refused my request for an interview. My calls to managing editor and former Washington bureau chief Jill Abramson, who has a considerable investigative reputation of her own, and to Washington bureau chief Philip Taubman, were not returned.

The capacity for embarrassment is refreshing. Even loyalists have been disgruntled that the paper's slogans might as well have become "Half the News, to Fit the Inside Pages" or "We're Sort of Good Enough" or "We Don't Know What the Facts Are, We Just Know What Powerful People Tell Us."

It's enough to make the spirit of journalism roll in its morgue. ■

TODD GITLIN *is a professor of journalism and sociology at Columbia University and the author, most recently, of* Letters to a Young Activist.



Altar Ego: Is there room in the Republican Party for religion *and* science?

God and Man in the GOP

THE RIGHT NATION: CONSERVATIVE POWER IN AMERICA
BY JOHN MICKLETHWAIT AND ADRIAN WOOLDRIDGE • PENGUIN • 464 PAGES • $25.95

BY JAMES P. PINKERTON

THE RECENT HISTORY OF AMERICAN politics can be told as the story of two alliances—one made and unmade by the Democrats, one made and kept by the Republicans. The Democrats' alliance was with socialism, or at least social democracy. The Republicans' alliance was with conservative religion. In the last decade, the Democrats, out of necessity, broke their left-economic alliance and benefited at the ballot box; at the same time, the Republicans seem to have cemented their right-religion alliance, even as the cost-benefit ratio from that alliance sinks into the negative zone.

The story of those shifting alliances is ably recounted by John Micklethwait and Adrian Wooldridge, reporters for *The Economist*, in their new book, *The Right Nation: Conservative Power in America*. Consider, as a prime example, the presidency of Bill Clinton. The 42nd president shifted his Democrats to the center and profited as congressional Republicans cleaved to the right. So Clinton won political victories by making ideological concessions. Early on, the authors recall, Clinton declared that he did not want to be remembered as an "Eisenhower Republican." But, in fact, the 42nd president was a bit like Dwight Eisenhower, and he became, the authors write, "essentially what people wanted him to be—and in the 'third way' he found a suitably capacious creed that suited his." It was Clinton, not Ronald Reagan, who called for "the end of welfare as we know it" and proclaimed that "the era of big government is over."

So now it's the right's turn at bat. The big hitter for the Republicans, of course, is President George W. Bush. Interestingly, despite the Republican Party's traditional pro-business leanings, Bush has not done well among the affluent. As the authors note, W. won just 54 percent of the votes of those who earned more than $100,000 a year in 2000. Yet the Texan, who says his favorite political philosopher is Jesus Christ, won 79 percent of the votes of those who went to church more than once a week; his true base is among Bible believers, not businesspeople.

Welcome to Right Nation 2004, in which the forces of right righteousness control the White House, the Congress, and 28 statehouses. For the cover of their book, Micklethwait and Wooldridge brandish a famous 1951 Norman Rockwell painting, *Saying Grace*, featuring a boy and his grandmother praying in a diner as others look on with puzzlement. That devotional image symbolizes the alliance between Republicans and religion—the alliance that helped drive conservative southern Protestants and conservative northern Catholics out of the Roosevelt coalition and into the Reagan coalition. But at

LARRY DOWNING/REUTERS/LANDOV

the same time, the social-issue conservatives flooding into the GOP drove many mainstream Protestants and seculars into the Democratic Party. And while the Republicans, for most of the last 35 years, got the better of the deal in terms of vote totals, the balance tipped in favor of the Democrats in 2000. In that year, Al Gore garnered half a million more votes than the cowboy from Crawford.

But politics is not shaped by faith alone. A group of mostly secular thinkers—Friedrich Hayek, Russell Kirk, Ayn Rand, Milton Friedman, and William F. Buckley—forged a conservative-libertarian alternative to the New Deal in the 1950s and '60s, though they didn't create enough oomph to dethrone John Maynard Keynes. Republican fortunes didn't really improve until the late '70s, when the neoconservatives made their long march from Democrat to Republican. The neocons—most of whom were Jewish but distinctly secular—"didn't go around expressing nostalgia for the lost glories of medieval Christendom, nineteenth-century capitalism, or the Old South," Micklethwait and Wooldridge write. Instead, they "spoke the language of social science." Using facts and figures, they explained that school busing, for example, was a disaster.

Whereas the paleocon Kirk was content to channel Charlemagne from his rural redoubt in Michigan, the neocons were in the thick of it, in Manhattan and Washington. Indeed, they powered the creation of a counter-establishment of think tanks; the authors devote a full chapter to the *rive droite*. Along its banks, among other policy-preneuring outfits, sits the American Enterprise Institute, said to contain "more conservative brainpower than the average European country."

At first, the more prominent neocons were the domestically oriented; Irving Kristol, Gertrude Himmelfarb, and Charles Murray wrote to undermine the credibility of the social-welfare system. But Bush—perhaps reacting to the experience of his father, who famously dismissed the "vision thing"—attracted a new set of thinkers, including Marvin Olasky, Myron Magnet, and John DiIulio, who created what might be called "compassionate neoconservatism." Thus the Texan, their agenda avatar, became the "new ideas" candidate in 2000.

So began the big shift, from the "humble" W., who scorned nation building, to the Churchillian W., bent on world-historicalizing the Arabs. And after the 2000 election, the foreign-policy neocons took wing—and sprouted talons. Maybe this post-election emergence was all part of a plan; in a deft discussion of the influence of proto-neocon philosopher Leo Strauss, the authors quote Milton Himmelfarb, Irving Kristol's brother-in-law, describing Straussianism as "an invitation to join those privileged few who, having ascended from the cave, gaze upon the sun with unhooded eyes, while yet mindful of those others below, in the dark."

Neocons, who once prided themselves on their sober-minded vision, have proven to be just another bunch of bloody jingoists after all, seeking to revivify colonialism.

And from their lofty self-appointed station, the neocons remade American foreign policy. Realism was replaced by "moral clarity." Bush's response to September 11, the authors write, "was an exceptionally ambitious, radical response. In particular, it was an exceptionally neoconservative one."

But the neocons, of course, needed someone to do their fighting for them. The authors note that few of the Bush hawks had any military experience, writing, "Most of the neocons had run away from Vietnam even faster than Bush." The solution to their neo-imperialist needs was to clinch the link between secular neoconservatism and religious conservatism; the neocons would provide the casus belli, while working-class Catholics and Protestants would provide the cannon fodder. And here's where the neocons proved their ideo-agility: They looked beyond religions that didn't much interest them and focused instead on coalitional opportunities. As the authors put it, the neocons have been "remarkably good at biting their lips on these subjects, treating Christian fundamentalism as something of a Straussian 'noble myth'—it might be nonsense, but it advances the conservative cause." Adding Democrat-defecting southerners to the Republican mix, recovering neocon Michael Lind has identified this new grouping as the "neocon-neocon" alliance—northern neoconservatives and southern neoconfederates.

Yet as the neoconservatives have always argued, theory isn't good enough; it's results that matter. And the launching of the Bush doctrine in Iraq has not given results that social scientists would wish to replicate. So neocons, who once prided themselves on their sober-minded vision, have proven to be just another bunch of bloody jingoists after all, seeking to revivify colonialism in a postcolonial age.

But with the current Iraq-lash, the foreign-policy vision has been eclipsed, even inside the Republican Party.

So what's left of the right? The economy is humming along well enough, but that's an afterthought to the activist elements in today's GOP. Yes, the neoconservatives might have shot their wad in Iraq, but the social-issue conservatives, having helped to guarantee the votes at home and the bodies abroad, now want attention paid to their own issues.

Now comes the rendezvous with destiny. Can the Right Nation really lead the United States with a neo-Vietnam foreign policy and a retro-religious domestic policy? Do Americans want to climb back into the primordial-theological ooze of creationism? How about the bad old days of gay bashing? The authors note that 8 million Americans listen to Dr. James Dobson denounce homosexuality on the radio, but at the same time, 20 million have been watching *Will & Grace* on TV.

Yet the biggest looming issue, to be sure, is stem-cell research, which will bring anti-abortionists into conflict with those who are pro-health and pro–long life. Indeed, the stem-cell de-

bate will split Republicans, the authors prophesy, writing, "Virtually every advance in reproductive technology will divide business conservatives, who see yet another opportunity to make money, from social ones who worry about mankind perverting God's will."

In fact, the authors opine that Bush could well lose the 2004 election as the coalitional contradictions crack open. Indeed, "[T]here is a recurring fear that an overdominant Southern wing will drag the GOP onto the cliffs of extremism in the same way that the McGovernite wing pulled the Democrats too far to the Left during the 1970s."

But even if Bush loses, even if the neoconservatives are felled by hubris—and even if the Falwell-Robertsonites are hooted off the national stage by the Enlightenment—the Right Nation, or at least the Limited-Government Market Nation, is here to stay. "Even with a Democrat in the White House," the authors assert, "America would remain a more conservative place than any of its peers in the West." As rightist economists say, "TINA" (There Is No Alternative) to capitalism and globalization.

So the next Democrats with any aspirations toward electoral permanence might be able to raise taxes here and there, but, for the most part, they will have to learn to play on that free-market field. But in the meantime, it would be nice if Republicans could restore their own house to normalcy, wresting the GOP away from the neocons. They would thereby reclaim their past traditions of foreign-policy realism, social tolerance, pro-science progressivism—and, oh yes, spending restraint. Such a path would get them more votes than the current path. Honest. ■

JAMES P. PINKERTON *is a columnist for* Newsday *and a fellow at the New America Foundation. He worked in the White House domestic-policy offices of Presidents Ronald Reagan and George Bush Senior and in the 1980, 1984, 1988, and 1992 presidential campaigns.*

BOOKS

Right on the Low Road

THE CHEATING CULTURE: WHY MORE AMERICANS ARE DOING WRONG TO GET AHEAD BY DAVID CALLAHAN · HARCOURT · 353 PAGES · $26.00

BY DRAKE BENNETT

FEW DECISIONS CAUSED GEORGE WASHington more agony than whether or not to accept some canal-company shares that the Virginia General Assembly offered him in 1784. The gift was perfectly legal, and such signs of appreciation were commonplace in the early republic. Washington was a private citizen at the time (a somewhat cash-strapped one at that) and had always been a great champion of the canal system, but he couldn't abide the thought that his acceptance might be seen as a payoff. He debated for months, writing everyone from Jefferson to Lafayette for advice. In the end, he decided to bequeath the shares to the college that was to become Washington & Lee.

Washington had what might be called an overdeveloped sense of virtue, and in that he has an heir in David Callahan, co-founder of the public-policy center Demos. Callahan's new book, *The Cheating Culture*, is a catalog of all the ways we fail to live up to the standards set not only by marbleized eminences like Washington but by generations of unremarkably honest Americans. Today, according to Callahan, we are lying about our taxes, padding our résumés, doping, embezzling, plagiarizing, and generally hornswoggling as never before. The cresting wave of corporate scandals and the journalistic betrayals of Jayson Blair and Stephen Glass were only the most publicized cases in "an epidemic of cheating." Yet for all the perp walks, firings, fines, and suspensions, "[T]here's been very little effort to connect all these dots and see them for what they represent: a profound moral crisis that reflects deep economic and social problems in American society."

Despite his big-picture ambitions, Callahan's style tends toward the anecdotal. The bulk of the book is taken up with describing some of the more egregious scams of our day. Many in the rogue's gallery—Blair, Jeffrey Skilling, Sammy Sosa, Henry Blodget—are familiar from yesterday's headlines. Some are less so: Danny Altamonte, whose father and coach lied about his age so he could play in the Little League World Series, thousands of customers of New York's Municipal Credit Union, Ivy League–bound plagiarizers at New York's Horace Mann School, even Callahan's friend Max, who fudges his tax return.

In focusing on questions of character, Callahan, an unabashed liberal, is planting his flag in conservative cultural territory. But the Jeremiahs of the right have, by and large, not listed cheating alongside drug use, casual sex, and rap lyrics as a harbinger of the apocalypse. That's because, Callahan argues, it is conservatives who laid the groundwork for today's cheating culture. For one thing, their evangelical brand of free-market fundamentalism helped undermine traditional codes of professional ethics. Callahan describes how the Sears auto-repair chain, under pressure from investors in the late 1980s, instituted a new compensation system that cut employees' base salaries, forcing them to make up the difference in performance incentives. Mechanics and sales staff had to ensure that a certain number of repairs, necessary or not, were performed to make their quotas. Within a year, complaints of fraudulent billing and dishonesty had mushroomed.

To make things worse, economic success has taken on moral dimensions. Starting in the early 1980s, Callahan writes, "It became not all right in our society to express yourself by altering your consciousness with drugs or getting naked with strangers. But it was all right—admired, in fact—to express yourself with a Rolex, a Porsche, or a pedantic mastery of French wines." Getting rich in and of itself was God's work (no talk of a camel fitting through the eye of a

needle there), and the details of how one got there began to seem trivial.

Paraphrasing the economist Robert Frank, Callahan describes ours as a "winner-take-all society," where more and more resources go to extravagantly rewarding star performers, whether CEOs or shortstops, leaving only table scraps for everybody else. And as the carrots get bigger, so do the sticks. Again, we have the disciples of Ronald Reagan and Newt Gingrich to thank; our increasingly threadbare social safety net makes the consequences of "losing" that much harsher. Egged on by societally sanctioned visions of pharaonic wealth and goaded by the specter of unassisted penury, it's no wonder that people are cheating more.

But are they? Blaming our new national Machiavellianism on the same conservatives who have done so much to make the personal political has a tempting, jujitsu-like elegance, and Callahan has the facts to support it—up to a point. His case is strongest where it is most straightforward: He notes how the small-government philosophy ascendant over the past 20 years has emboldened cheaters everywhere by undermining the regulatory powers of the state. The correlation is especially striking at the Internal Revenue Service, where, as the agency has seen its funding shrivel, the amount of money lost to unpaid taxes has ballooned from $100 billion in 1990 to $250 billion in 2001 (some outside experts put it as high as $500 billion).

But these are particular cases of enforcement, not questions of culture. When Callahan tries to (as he puts it) connect the dots, to sketch out the whole ugly panorama, he gets ahead of his evidence. At times he admits as much: "While there is no hard evidence that misconduct in journalism has increased in recent years, there are plenty of reasons to think that journalists are facing new pressures on their integrity that stem from a greater focus on the bottom line and bigger pay disparities." If, of course, those new pressures are not leading to more misconduct (and, as recent cases have reminded us, cheating journalists are especially likely to leave hard evidence), Callahan's case remains speculative. Perhaps realizing this weakness in his argument, he sometimes verges on the downright evasive. He notes that "it seems that more doctors are breaking more rules and putting Americans at risk in the process," only to admit in an endnote that, again, "[T]here is little hard evidence of either an increase or decrease in conflicts of interest among doctors."

Cheating is as American as snake-oil salesmen: The American Revolution itself might not have happened if the colonists weren't such brazen tax dodgers (it was their great good fortune to be able to turn what had been routine evasion into an act of political defiance). Nor are declensionist plaints like Callahan's anything new. Within a few years of the Revolution, nearly all of the Founding Fathers were lamenting the unscrupulousness of the newly empowered polity. As even Washington realized, self-interest swept virtue before it: "The few, therefore, who act upon Principles of disinterestedness are, comparatively speaking, no more

than a drop in the Ocean."

Strangely enough, nowhere in *The Cheating Culture* does Callahan define cheating. The closest he comes is in the subtitle, where he seems to equate it with "doing wrong." The definition bears traces of what Richard Hofstadter once described as the "moral absolutism" that handicaps American reform movements. Though his training is in political science, Callahan, like the mugwumps of old, often sounds like a man of the cloth. His closing chapter, where he suggests how we might wean ourselves from our devious ways, opens as a grab bag of favorite progressive solutions—some, like smart growth and affirmative action, only tenuously related to cheating—and closes as a sermon. "Be the chump," he exhorts us, "who files an honest tax return."

George Washington would be proud, but even he knew better. Ours, after all, is a cheating culture. ■

DRAKE BENNETT, *a former* Prospect *writing fellow, is a freelance writer living in Cambridge, Massachusetts.*

Blue Meanie: Nigerian strongman Sani Abacha; how responsible is the West?

The Lost Continent

A CONTINENT FOR THE TAKING: THE TRAGEDY AND HOPE OF AFRICA
BY HOWARD W. FRENCH · KNOPF · 280 PAGES · $25.00

BY DAPHNE EVIATAR

THE APPOINTMENTS OF COLIN POWELL as secretary of state and Condoleezza Rice as the president's national-security adviser raised hopes in some quarters that the United States would begin to take more serious interest in Africa and its problems. But those hopes have been largely dashed. The government has failed to provide adequate funds for the campaign against AIDS in Africa and the Caribbean on which the president pledged to spend $15 billion over five years. And the administration has done nothing to reverse the cynical indifference of U.S. policy toward Africa's corrupt governments.

In *A Continent for the Taking*, Howard French, a former *New York Times* West Africa bureau chief, gives us the context necessary to understand Africa's current problems and the deeper reasons for the indifference—and complicity—of European governments and the United States. Recounting his travels through Nigeria, Congo, Liberia, and Mali, French weaves the history of Western machinations in Africa into the sordid series of events that befell the region in the mid-1990s to try to make sense of its current sorry state.

For French, who is African American, reporting on Africa became a personal quest to understand what has happened to the fabled continent of his ancestors. He describes how over four years he traveled to tiny backwater villages to see the impact of the gruesome Ebola epidemic, braved checkpoints guarded by drug-addicted child soldiers in Liberia, and tracked the final days of the dictator Mobutu Sese Seko in Zaire. On a more upbeat note, he cheers one of Africa's few successful democratic transitions in Mali.

The more French saw, however, the angrier he became, whether at American news organizations that only cover Africa when its current tragedy outdoes its last horror, at Europeans for their willful amnesia about their historical role, or at the U.S. government for embracing the region's worst dictators at the expense of promising reformers who offer real opportunities for democracy. Although he couldn't allow his fury to color his reporting for the *Times*, French has no qualms about letting it spill all over the pages of his book. That lends this broad-ranging work a passionate quality, but while French's judgments are generally on target, they're often unnecessary. These facts speak for themselves.

Consider Nigeria. When French first landed there in 1994, the country was in chaos. While other parts of Africa were beginning to "go democratic," the murderous General Sani Abacha had seized power, annulled Nigeria's presidential elections, and imprisoned the winner. A foreigner arriving unaccompanied in Lagos was in serious jeopardy of kidnapping and murder, and life had so hardened the locals, according to French, that when a car hit a pedestrian on the highway, no one stopped to help. "I saw for myself," writes French, "the remains of a man run over so many times he had been reduced to the thickness and consistency of wallpaper."

AP/WIDE WORLD PHOTO

Nigeria's problems stem directly from its history. Britain created the country in 1914 from an amalgam of unrelated tribes and provinces composed of some 250 different ethnic groups. The British encouraged these divisions, which made it easier for them to maintain power. But ever since Nigeria's independence in 1960, tensions between the dominant regional groups have simmered and served as a convenient excuse for national leaders' militarism and repression.

Nigeria's vast oil reserves have increased the opportunities and incentives for government corruption. And because the United States and Europe increasingly rely on that oil, they're reluctant to object to stolen elections. "Seriously chastising Abacha for aborting Africa's biggest experiment with democracy was never seriously considered," French writes.

Then there are the Western oil companies, which contract with the government and provide the bulk of its revenues. To understand the companies' impact, French traveled to the swamps of the oil-rich Niger Delta, where he found little to show for the billions of dollars worth of crude that has been sucked out of the ground. While huge gas flares have burned off local vegetation, the Royal Dutch/Shell Group, which dominates local oil production, says it has met its obligations to the community because it has built a few schools. French isn't convinced. "It is difficult to say with precision what responsibility for the welfare of the local people a company like Shell should bear when it interlopes and extracts billions of dollars worth of oil, fully aware that virtually none of it is being locally reinvested by the government," he writes. But "they must also acknowledge the fact that extraction without local development equally amounts to theft."

The story in Zaire is even more gruesome. Appropriated by Belgium in the mid-1880s, the region then known as Congo was rich with ivory, hardwood, rubber, and copper. The Belgians governed with striking brutality, making farming a crime, for example, wherever they needed men to cultivate rubber (those that dared to cultivate the land instead had their hands chopped off). After Belgian rule ended in 1960, the Congolese elected a popular leader, Patrice Lumumba, but the United States, fearful of his communist leanings, helped oust him in a coup, paving the way for the rise of the eccentric dictator Mobutu Sese Seko. Despite Congo's vast reserves of diamonds and copper and the assistance of U.S.–financed power projects, Mobutu ran the country into the ground.

When French arrived in Zaire in 1996, Mobutu was facing the most serious challenge of his political career. In Rwanda, hatred between Hutus and Tutsis aroused under Belgian rule had led to the genocidal massacre of 800,000 two years earlier, and its aftermath was spilling over the border. Hutu refugees living in United Nations–run camps in Zaire were rearming for a counter-assault against Rwanda's new Tutsi government when Rwandan-backed forces suddenly emerged in Zaire to extinguish them. The United States, embarrassed by its failure to intervene in the slaughter of the Tutsis in Rwanda, denied what was happening. Western journalists, meanwhile, were so ignorant of Africa generally that they didn't even understand who was fighting whom. "Anywhere else in the world we would have been judged incompetent," writes French, in one of his many condemnations of the Western press, "but in Africa being able to get somewhere quickly and write colorful stories was qualification enough."

Not until months into the conflict did journalists, the United Nations, and the United States admit that tens of thousands of Hutus were being slaughtered in Zaire. But by then it was clear that Mobutu, "America's longtime favorite African dictator," was losing to the rebels, led by the Rwandan-backed Laurent Kabila, who was situating himself to seize power. At this point the United States, despite the emergence of a promising reformist opposition leader, Etienne Tshisekedi, cynically aligned itself with the shadowy Kabila, who took over the country soon thereafter.

When then–Secretary of State Madeleine Albright made her second official visit to Africa in 1997, she praised the continent's newest leaders for "bringing a spirit of hope and accomplishment to their countries." French, disgusted, declined an invitation to accompany her. "We had come full circle, renouncing an old guard of 'Big Men' only to embrace a brand-new crop of them. The renaissance leaders Albright was visiting were Africa's new soldier princes, men who had come to power not through the ballot box but at gunpoint." The same strategy had led the United States to support the murderous President Samuel Doe in Liberia, the authoritarian Yoweri Museveni in Uganda, and the brutal anti-communist guerrilla leader Jonas Savimbi in Angola.

The United States, French saw with disgust, "had come full circle, renouncing an old guard of 'Big Men' only to embrace a brand new crop of them."

How, French wonders, can Western governments so easily rationalize the ruinous role they've played in Africa? "The answer lies partly in the fact that for Europeans, Africa has always been an irresistible 'other,'" writes French. "Like the indelible taint of original sin, the problem with Africa in the minds of Westerners is that it is Africa."

Today, the United States is only strengthening its ties to such countries as Angola, despite well-documented official corruption. As we purchase increasing amounts of African oil, we have the same reasons for doing business with despotic governments that we have long had in the Middle East. Of course, President Bush has announced that we will no longer accept tyranny and instead insist on democracy for Middle Eastern governments. But Africa is apparently different. It always has been. ■

DAPHNE EVIATAR, *a Brooklyn-based writer, reported from Africa as a Pew International Journalism Fellow in 2003.*

Bush's God

BY ROBERT B. REICH

It was recently reported that the Bush campaign had e-mailed members of the clergy, soliciting help in identifying "friendly" congregations that would do the campaign's bidding in their areas. When the e-mail came to light, legal experts warned that any religious organization that endorsed one candidate over another could lose its tax-exempt status. A few days later, House Republicans added a measure to a tax bill working its way through Congress called the "Safe Harbor for Churches" act, which would allow any religious organization to make as many as three "unintentional" political endorsements in a calendar year without jeopardizing its tax-exempt status.

When questioned about all of this, Steve Schmidt, a spokesman for the Bush campaign, said, "The campaign wants people of faith to participate in the political process." Clearly, the Bushies want more than this. Because any exemption from paying taxes has the same economic value to its recipient as a direct subsidy from the government, the Bush campaign wants religious groups to enter the political fray—with costs offset by the federal government. The reason, of course, is that the ground troops of the Bush campaign are America's religious right—mostly right-wing evangelical Protestant churches, but also right-wing Southern Baptists, anti-abortion Catholics, and even a smattering of extreme pro-Israeli and anti-Arab Jews. For George W. Bush, firing up the troops means firing up "friendly" right-wing congregations.

President Bush blurs a crucial distinction between people of faith and large religious institutions.

The Constitution of the United States prohibits the federal government from enacting laws that promote or establish any religion. That's because the Framers understood the importance of keeping a strict separation between church and state. History has amply demonstrated how established religions undermine democracy. Citizens holding different beliefs from the majority, or no beliefs at all, are often disadvantaged, marginalized, or even ostracized. Government support tends to corrupt even an established religion whose leaders seek official favors in return for religious decrees and indulgences, and who do the government's bidding in return for state benefits.

In the United States, religious groups are exempted from paying taxes not because they are religious (that would violate the Constitution's establishment clause) but because they are nonprofit institutions, and, like all nonprofits, are barred from explicitly taking sides in a campaign. To enlist congregations in campaign activities is not at all like enabling individual "people of faith" to participate in politics; it's utilizing the privileged organizational capacity of religious institutions—which should be barred from politics—for expressly political purposes.

There is a larger pattern here. In its eagerness to promote the teaching of creationism in public schools, encourage school prayer, support anti-sodomy statutes, ban abortions, bar gay marriage, limit the use of stem cells, reduce access to contraceptives, and advance the idea of America as a "Christian nation," the Bush administration has done more to politicize religion than any administration in recent American history. It has already blurred the distinction between what is preached from the pulpits and what are the official policies of the United States government, to the detriment of both. Right-wing fundamentalists—including not a few high-level Bush-administration officials—charge us secularists with being "moral relativists" who would give equal weight to any moral precept. In so doing, they confuse politics with private morality. For religious zealots, there is no distinction between the two realms. And that is precisely the problem.

The great conflict of the 21st century will not be between the West and terrorism. Terrorism is a tactic, not a belief. The true battle will be between modern civilization and anti-modernists; between those who believe in the primacy of the individual and those who believe that human beings owe their allegiance and identity to a higher authority; between those who give priority to life in this world and those who believe that human life is mere preparation for an existence beyond life; between those who believe in science, reason, and logic and those who believe that truth is revealed through Scripture and religious dogma. Terrorism will disrupt and destroy lives. But terrorism itself is not the greatest danger we face. ■